TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 121.

BOSTON AND MAINE RAILROAD, PLAINTIFF IN ERROR,

vs.

KATHARINE HOOKER.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED OCTOBER 30, 1911.

(22,923)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 22, 1913.

1 Know Ye that among the records of our Superior Court within and for the County of Middlesex, it is thus contained, to wit:

COMMONWEALTH OF MASSACHUSETTS,
[L. S.] *Middlesex, ss:*

To the Sheriffs of our several Counties, or their Deputies, Greeting:

We command you to attach the goods and estate of the Boston and Maine Railroad, a corporation duly organized and existing under the laws of said Commonwealth and having one or more usual and established places of business in the County of Middlesex in said Commonwealth to the value of three thousand dollars, and to summon the said defendant (if it may be found in your precinct) to appear before our Justices of our Superior Court, at Cambridge, within and for our said County of Middlesex, on the first Monday of November next: then and there in our said Court to answer unto Katharine Hooker, wife of John D. Hooker of Los Angeles in the State of California in an action of tort to the damage of the said plaintiff (as she saith) the sum of three thousand dollars, which shall then and there be made to appear with other due damages. And have you there this writ, with your doings therein.

Witness, John A. Aiken, Esquire, at Cambridge, the thirteenth day of October, in the year of our Lord one thousand nine hundred and eight.

THEO. C. HURD, *Clerk.*

Upon which writ the officer serving the same made the following return;

MIDDLESEX, *ss:*

SOMERVILLE, *October 19th*, 1908.

By virtue of this writ, I this day attached a chip as the property of the within named defendant corporation, the Boston and Maine Railroad and afterward on the same day summoned it to appear and answer at Court as within directed by leaving at the last and usual place of abode of Herbert E. Fisher, Esq., its Treasurer and the officer in charge of its business, a summons together with an attested copy of this writ.

BARTHOLOMEW M. YOUNG,
Deputy Sheriff.

On the first Monday of November, A. D. 1908 said Katharine Hooker appeared by her attorney Samuel Williston, Esquire, and entered said action.

2 First Count. The plaintiff says that the defendant is, and was during all the times hereinafter referred to, a common

carrier operating a railroad between the City of Boston, Mass., and (among other places) Sunapee Lake Station in the State of New Hampshire. And the plaintiff further says that on or about Sept. 15, 1908, she purchased a first-class ticket for passage from said City of Boston to said Sunapee Lake Station and delivered through a transfer company to the defendant as personal baggage for transportation between the said points two trunks and one suit case and the defendant received the same and checked the same and transported the same to said Sunapee Lake Station on a train on said day, the plaintiff being a passenger in said train. And the plaintiff further says that while the said two trunks and suit case were still in the hands of the defendant as a common carrier at the station of the defendant at Sunapee Lake they were destroyed by fire, to the plaintiff's great damage, with their contents, (clothing and other personal baggage of the plaintiff,) of great value.

Second Count. The plaintiff says that the defendant is, and was during all the times hereinafter referred to, a common carrier operating a railroad between the City of Boston, Mass., and (among other places) Sunapee Lake Station in the State of New Hampshire. And the plaintiff further says that on or about Sept. 15, 1908, she purchased a first-class ticket for passage from said City of Boston to said Sunapee Lake Station and delivered through a transfer company to the defendant, as personal baggage for transportation between the said points, two trunks and one suit case and the defendant received the same and checked the same and transported the same to said Sunapee Lake Station on a train on said day, the plaintiff being a passenger in said train. And the plaintiff says that she was all the time in the exercise of due care in regard to the checking and transportation of said baggage but that the defendant, while the said two trunks and suit cases were still in its possession as a common carrier at its station at Sunapee Lake, negligently and carelessly allowed said station to catch fire owing to the negligent and careless means used to light said station and negligently and carelessly allowed the said baggage of the plaintiff to be destroyed owing to the lack of any precaution for preventing
3 or extinguishing fire, whereby the said two trunks and suit cases with their contents, (clothing and other personal baggage of the plaintiff), of great value, were destroyed, to the plaintiff's great damage.

The two counts in this declaration are both for the same cause of action. On the ninth day of November, A. D. 1908 said defendant appeared by its attorneys Messrs. Trull and Wier and filed the following answer, to wit:—And now comes the defendant in the above entitled cause, and for answer says that it denies each and every material allegation in the plaintiff's writ and declaration contained, as fully and specifically as if each allegation were severally set forth, and separately denied. On the twentieth day of December, A. D. 1909 said plaintiff was allowed to amend her writ and declaration as follows, viz:—By adding after the words, "In an action of tort," the words, "or contract, it being deemed doubtful by the plaintiff which form of action is appropriate for her cause of action"; and by

adding to her declaration the following, Third Count. The plaintiff says the defendant is, and was at all times during which the matters herein alleged took place, a common carrier of goods and of passengers, operating trains, among other places, from Boston, in the Commonwealth of Massachusetts, to Sunapee Lake Station, in the State of New Hampshire. The plaintiff further says that on the fifteenth day of September, nineteen-hundred-and-eight, in consideration of the purchase by the plaintiff of a first-class ticket for the transportation of a passenger from said Boston to said Sunapee Lake Station, and in further consideration of the sum of twenty-three cents paid by the plaintiff on account of the weight of the baggage, hereinafter referred to, exceeding by forty-five pounds the amount of personal baggage which under the defendant's rules the plaintiff was entitled to have transported, defendant agreed to transport the plaintiff from said Boston to said Sunapee Lake Station, and also agreed to transport from and to such places respectively, the plaintiff's baggage consisting of two trunks and one valise, or suit-case, and their contents, and to redeliver the said baggage to the plaintiff at said Sunapee Lake Station on presentation of certain baggage checks given by the defendant in Boston on receiving said baggage.

4 And the plaintiff alleges that she purchased such a first class ticket for transportation from said Boston to said Sunapee Lake Station, and that she delivered to the defendant said bagage and paid the defendant the said overweight charge of twenty-three cents, but that, nevertheless the defendant neglected and refused, and still neglects and refuses, to deliver to the plaintiff the said baggage though the plaintiff duly made demand for the same at said Sunapee Lake Station and offered to deliver to the defendant the checks which it had issued for such baggage, to the plaintiff's damage as stated in her writ. On the tenth day of February, A. D. 1910 said defendant was allowed to amend its answer by adding thereto the following, viz:—Further answering the defendant says that the transportation of baggage alleged in the plaintiff's declaration was interstate and was controlled by the acts of Congress regulating interstate commerce; that the defendant prior to September 1908 had filed with the Interstate Commerce Commission and had printed and kept open to public inspection as required by the acts of Congress all the rates, fares and charges for transportation between different points on its route, including rates, fares and charges for transportation between Boston, in the Commonwealth of Massachusetts, and Sunapee Lake Station in the State of New Hampshire; that said schedules printed as aforesaid plainly stated the places between which property and passengers would be carried, including among other places between which property and passengers would be carried, said Boston and said Sunapee Lake Station and also stated all terminal storage and all other charges required by the Interstate Commerce Commission, all privileges and facilities granted or allowed and all rules and regulations which in any way changed, affected or determined any part of the aggregate of such aforesaid rates, fares and charges or the value of the service rendered to any and all passengers, including passengers between said Boston

and said Sunapee Lake Station; that these schedules continued on file and were in full force during the month of September 1908; that said schedules were during September 1908 plainly printed in large type; and that prior to September 1908 and in accordance with the duly authorized order of the Interstate Commerce Commission dated June 2, 1908, the defendant had placed in the hands and custody of its agent at its station in said Boston, at which station pas-
5 sengers were received for transportation and at which station ticket agents were employed, all the rate and fare schedules applying from said station and the terminal and other charges applicable at the station, including the schedules issued by the defendant and those issued by its authorized agents and those in which it has concurred; that in accordance with said order during September 1908 said agent was provided with facilities for keeping a file of such schedules in ready-reference order and was required to keep and did keep said files in complete and ready accessible form; and and did keep said files in complete and readily accessible form; and of gave information contained in said schedules and lent assistance to seekers for information therefrom whenever opportunity so to do was presented to him and accorded any and all inquirers opportunity to examine any of said schedules and did not require or request any such inquirers to assign any reason for such desire; that all this was done by the said agent with all the promptness possible and consistent with the proper performance of the other duties devolving upon him; and that the defendant in the manner aforesaid and in all other ways during the month of September 1908 and at all other times conformed to the provisions of the act of Congress and the orders and regulations of the Interstate Commerce Commission relative to the schedules of rates, fares and charges for transportation between different points along its routes, including rates, fares and charges between said Boston and said Sunapee Lake Station and relative to all the privileges and facilities granted or allowed by the defendant, including those at said Boston and between said Boston and said Sunapee Lake Station; that the rates, fares and charges for transportation and all the terminal, storage and all other charges required by the Interstate Commerce Commission and all privileges and facilities granted or allowed, including those at said Boston and between said Boston and said Sunapee Lake Station during the month of September 1908, were established, determined and fixed by the schedules printed, filed and published as aforesaid; that the only fare for one passenger from said Boston to said Sunapee Lake Station during September 1908 was printed in said schedules
6 and was two and 25/100 dollars; that said schedules contained the following provisions as to the transportation of baggage and the liability of the defendant therefor:

"Regular Baggage Service.

One hundred and fifty pounds of personal baggage, not exceeding $100 in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight, charge will be made as follows, based on the

highest limited ticket, rate prevailing via route of ticket, or the lowest unlimited rate when no limited rates are quoted; except that via Sound Lines, between Boston and New York, unlimited rates will apply throughout the year. The minimum charge between local stations will be 15 cents, and to stations on or via another road, 25 cents.

Local and Through Excess Baggage Rates.

When the ticket rate is—		Rate per 100 lbs. will be	When the ticket rate is—		Rate per 100 lbs. will be
From $.05 to	$.39	$.15	From $25.50 to	$26.99	$3.15
.40	.74	.20	27.00	28.99	3.35
.75	.99	.25	29.00	30.49	3.55
1.00	1.24	.30	30.50	31.99	3.75
1.25	1.49	.35	32.00	33.24	4.00
1.50	1.84	.40	33.25	35.49	4.25
1.85	2.19	.45	35.50	37.49	4.50
2.20	2.54	.50	37.50	39.59	4.75
2.55	2.89	.55	39.60	41.74	5.00
2.90	3.24	.60	41.75	43.74	5.25
3.25	3.74	.65	43.75	45.75	5.50
3.75	4.44	.70	45.76	47.85	5.75
4.45	5.14	.75	47.86	49.99	6.00
5.15	5.49	.80	50.00	52.14	6.25
5.50	5.84	.85	52.15	54.15	6.50
5.85	6.14	.90	54.16	56.24	6.75
6.15	6.49	.95	56.25	58.24	7.00
6.50	6.84	1.00	58.25	60.24	7.25
6.85	7.14	1.05	60.25	62.49	7.50
7.15	7.49	1.10	62.50	64.49	7.75
7.50	7.84	1.15	64.50	66.59	8.00
7.85	8.34	1.20	66.60	68.74	8.25
8.35	9.00	1.25	68.75	70.75	8.50
9.01	10.00	1.30	70.76	72.99	8.75
10.01	11.00	1.35	73.00	74.99	9.00
11.01	12.00	1.45	75.00	76.99	9.25
12.01	12.74	1.55	77.00	78.99	9.50
12.75	13.49	1.65	79.00	80.99	9.75
13.50	14.24	1.75	81.00	82.99	10.00
14.25	15.24	1.85	83.00	85.49	10.25
15.25	16.24	1.95	85.50	87.99	10.50
16.25	17.24	2.05	88.00	89.99	10.75
17.25	18.49	2.15	90.00	91.99	11.00
18.50	19.49	2.25	92.00	93.99	11.25
19.50	20.99	2.40	94.00	95.99	11.50
21.00	22.49	2.55	96.00	98.24	11.75
22.50	23.99	2.75	98.25	100.24	12.00
24.00	25.49	2.95			

7 For excess value, the rate will be one-half of the current excess baggage rate per 100 pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents."

"Baggage liability is limited to personal baggage not to exceed one hundred (100) dollars in value for a passenger presenting a full ticket, and fifty (50) dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of checking the baggage."

Further answering the defendant says that on September 15th, 1908, or at any other time the plaintiff did not declare and stipulate that her baggage exceeded one hundred dollars in value and did not pay or offer to pay any excess charges for the transportation of personal baggage exceeding one hundred dollars in value and the defendant says that the maximum limit of liability in this action is one hundred dollars.

Afterwards the cause was submitted to the Court who on the twenty-fourth day of October, A. D. 1910, after a full hearing, found for the plaintiff and assessed damages in the sum of two thousand one hundred thirty-three dollars and four cents. Thereupon said defendant being aggrieved by the rulings, opinions and directions of the Court in matters of law alleged exceptions thereto which being reduced to writing were filed with the clerk, presented to the Court and allowed by the presiding Justice. (A copy whereof is hereto annexed marked Exhibit "A.") On the seventh day of September, A. D. 1911 a rescript from the Supreme Judicial Court for the Commonwealth was filed in the case in words following, to wit: "Exceptions overruled." (A copy of the opinion of the Supreme Judicial Court is hereto annexed marked Exhibit "B.") It is therefore, on this third day of October, A. D. 1911, considered by the Court that the said Katharine Hooker recover against the said Boston and Maine Railroad the sum of two thousand two hundred and fifty-three dollars and seventy-seven cents damage, and costs of suit taxed at eighty-four dollars and twenty-seven cents.

8 All which premises we have held good by the tenor of these presents to be exemplified. And the foregoing is a transcript of the record.

In testimony whereof, we have caused the seal of our said Superior Court to be hereunto affixed.

Witness, John A. Aiken, Esquire, Chief Justice of our said Superior Court, at Cambridge, this twenty-fourth day of October in the year of our Lord one thousand nine hundred and eleven.

[Seal of the Superior Court.]

WM. C. DILLINGHAM, *Clerk.*

9 EXHIBIT "A."

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Superior Court, September Sitting, 1910.

KATHARINE HOOKER
vs.
BOSTON & MAINE RAILROAD.

Defendant's Exceptions.

The pleadings are made a part of this bill of exceptions. The plaintiff elected to proceed to trial on the third count in contract

and waived the other counts. The case was tried by a judge without a jury. The evidence of the plaintiff tended to show that she was a resident of Los Angeles, in the State of California; that on August 26, 1908, she left her home and traveled East for the purpose of visiting friends in New York and Boston and different parts of New England; that on the 15th of December, 1908, she was in Boston, where she had been staying about two weeks at the Westminister Hotel; that she made preparations to go to Lake Sunapee, in the State of New Hampshire; that her baggage was contained in a large canvas or leather trunk and a small wooden trunk and a leather suit case; that the canvas trunk was worth $35 and had cost more and been used once; that the leather trunk was worth $20 and that the suit case had never been used previously and had cost $12; that her husband or her brother-in-law arranged for the purchase of a
10 ticket from Boston to Lake Sunapee and for the checking of her baggage; that this was done by instructing the hotel people to have the baggage checked to Lake Sunapee; that the last that she saw of her baggage was when it was in the room of her hotel, and that the hotel people undertook to deliver it to a transfer company, who was to have it checked and return the checks to the hotel; that she planned to leave Boston at about 1.30 P. M. and that she took the train at that hour; that she received a railroad ticket for her proposed journey from Boston, which was not the original ticket upon which her baggage had been checked; that she did not receive the ticket on which her baggage was checked, neither did she receive the baggage tickets before starting on her journey; that the baggage was carried on the same train; that she saw the baggage at the station in Lake Sunapee when she alighted from the train; that she arrived at Lake Sunapee early in the evening and took a steamer across the Lake to the country home of her aunt, whom she was to visit; that she received the baggage checks by mail on the evening of the following day, September the 16th; that the numbers of these checks were 973818, 429978, 429979, Series 8; that they were card checks; that she was not aware at the time she began her journey from Boston what was printed or written upon these checks or upon checks habitually in use by the defendant; that after receiving the checks on September the 16th, there was no means of going to the station until the next morning; that she went to the station by the first boat on the morning of September the 17th, and found that the station had been burned; that she asked the agent if her trunks were to be had, and learned that the station with its contents had been burned the night before; that she has never seen her baggage since.

The plaintiff further testified as to the value of the articles owned by her and contained in the trunks and dress suit case. According to her evidence the total value of this property amounted to nineteen hundred four and 50/100 dollars.

On cross-examination she testified that on September 15th,
11 1908, she was staying in the Hotel Westminster in Boston; that then the two trunks and dress suit case were in her room in the hotel; that she had a conversation with her husband relative to the procuring of a ticket for her trip to Lake Sunapee; that she

did not know of her own knowledge who purchased a ticket for her; that the checks were not placed on the trunks and dress suit case in her presence; that the last that she saw of the baggage in Boston was while it was in her room at the hotel and before it had been checked; that she had no personal knowledge with reference to the baggage from that moment, which was about 9.30 in the morning of September 15, 1908, until she saw it next upon the station platform at Lake Sunapee; that she herself did not do anything personally about the purchase of the ticket or the checking of the baggage; that Mr. Hooker, her husband, undertook to buy the ticket and to check the baggage; that she did not remember that she made any request of anybody to do this for her; that the porters of the hotel removed the baggage from her room about 9.30 o'clock in the morning; that she did not see the transfer people take the baggage from the hotel; that prior to the time of leaving the hotel she had not seen or received any ticket from Boston to Lake Sunapee and that she did not receive the checks until after her arrival at her aunt's house at Lake Sunapee; that the hotel people undertook to purchase the ticket and checked the baggage through a transfer company; that before leaving the hotel she saw her husband and her brother-in-law go to the desk for the purpose of inquiring for the checks; that she knew that the trunks left her room about 9.30 in the morning for the purpose of being checked and sent to the railroad train which she took at 1.30; that before leaving the railroad station she was told that the checks would be mailed to her as soon as they could be procured; that this arrangement was made by her husband; that after the trunks had been taken out of her room she remained there until it was time to leave for the train, which was approximately about quarter to one or one-o'clock; that when
12 she reached the railroad station preparatory to take the train a ticket was bought for her, on which ticket she traveled; that when she arrived at the Lake Sunapee station and saw the baggage upon the platform she did not take any means to obtain the trunks and remove them from the station; that it was on the morning of September the 17th, that she first went to the station for the trunks; that during the evening of September the 15th, and the entire day of September the 16th, she took no means of getting the baggage, as she had no checks; that the checks came through the New London Post Office; that they would have come through the Sunapee Park Lodge Post Office except for the fact that that post office was closed on the morning of September the 16th; that on leaving Boston on September the 15th, she left with her brother-in-law and with her husband her mailing address as Sunapee Park Lodge and requested them to forward any mail that might come to them for her to that point and at that address; that it was understood that the baggage checks should be mailed to that address and they were in fact mailed to her from the Hotel Westminster; that when she arrived at Sunapee Lake she made no claim with reference to her baggage at that time and did not say anything to the station agent or person in charge on behalf of the company, about the baggage; that she did not take any means to see that it was protected or whether it was left unpro-

tected nor had any conversation with reference to it in any way; that she did not examine the baggage at Sunapee Lake Station to see whether any checks were upon the trunks and suit case; that she does not know whether there were any checks as she did not examine them; that when she went to take the train she drove from the hotel as rapidly as possible and got on board the train as quickly as possible. It was admitted by the plaintiff that no declaration or stipulation was made by the plaintiff or her agents at the time the baggage was checked that it exceeded one hundred dollars in value and no charges were paid for valuation in excess of one hundred dollars.

13 The plaintiff filed interrogatories to the president of the defendant corporation and agreed to certain admissions made by the defendant in lieu of answer to such interrogatories. The admissions, which were read at the trial as part of the plaintiff's case, are as follows:

The defendant admits that it operated a train leaving Boston at about one o'clock for Sunapee Lake on September 15th, 1908, and that it owned and controlled, during the said month of September, the railroad station in New Hampshire called the Sunapee Lake station; that the structure of said station was distant about fifty feet from the shore of Lake Sunapee; that a steamboat landing and pier were connected with said station; that the platform of the station, where it abutted on the railroad track, was distant about fifty feet from the end of the pier; that the station platform measured parallel to the railroad track, was about two hundred feet in length; that there were a number of summer residences upon the shores of Lake Sunapee; that for the most part, people occupying these residences during the summer months make use of said station at Lake Sunapee when traveling to and from Lake Sunapee by railroad and that a very large part of their baggage is checked to and from this station; that Lake Sunapee is a lake about eight miles long and at places about two miles wide; that during the months of the summer and early autumn steamboats ply from Sunapee Lake station to various points on the shore of the lake; that these steamboats were not owned or controlled by the railroad; that most passengers during the summer and early autumn of 1908 after arriving at Lake Sunapee station took steamboats to arrive at their points of destination; that there is a considerable town or colony of persons within a mile of Sunapee Lake station; that the Sunapee Lake station was destroyed by fire on or about September 16th, 1908; that the fire started about seven-forty to seven-fifty o'clock in the evening and completely destroyed the station; that there was baggage in the station at the time of the fire, which was destroyed; that there was an agent of the defendant and a boy about

14 twelve years old not in the employ of the defendant nor related to said agent, in the station at the time when it caught fire; that the fire was caused by the falling of a lamp; that it is not known what caused the lamp to fall; that a part of the station was lighted by this lamp which was made of brass with a large round wick; that there was a flue running through the lamp

from the bottom and through the wick; that this lamp was suspended on a brass ring which was attached to a wire which ran over the lamp; that to the wire was attached a rope which after running through certain pulleys *were* tied to a hook on the wall of the station; that this lamp contained about six pints of kerosene; that it would be difficult to learn when or of whom this lamp was bought or what price was paid for it; that kerosene oil was used in the lamp, which was purchased in Boston of the Standard Oil Company and delivered to the station agent at this station in cans containing about five gallons; that this oil was of a test of one hundred and sixty; that the kerosene oil for the Sunapee Lake station was purchased with oil used for other stations; that the defendant paid for this oil either ten and one half cents per gallon or eleven and a half cents per gallon including cask; that there was a large water tank situated about two to three hundred feet from the station, belonging to the defendant and used to supply engines with water through a large pipe; that a water pipe ran from this tank to a faucet in the station; that no other provision was made so that water in large quantities could be obtained in case of fire; that the defendant railroad received in Boston on September 15th, 1908, for transportation from Boston to Sunapee Lake station, three pieces of baggage for which checks were issued, numbered respectively 973818, 429978, 429979, Series 8; that a first-class ticket for transportation for a passenger from Boston to Sunapee Lake station was presented at the time such baggage was checked; that a payment of twenty-three cents was made for checking such baggage on account of the weight thereof exceeding by forty-five pounds the amount which, under its rules, the plaintiff was entitled to have checked and transported on said ticket; that this baggage was transported from Boston to Sunapee Lake station on the train leaving Boston at or about one o'clock on September 15th, 1908, and arrived at Sunapee Lake station about half-past four o'clock in the afternoon of the same day; that the defendant does not know whether said baggage was delivered by said corporation to the plaintiff or to anyone claiming the same and presenting the checks therefor; that defendant does not know whether the said baggage was destroyed by fire while at Sunapee Lake station and in its possession.

The defendant introduced in evidence the Act of Congress of the United States of America regulating interstate commerce and the amendments thereto, being the Act to regulate commerce approved February 4, 1887, and the amendments as amended by an Act approved March 2, 1889, and by an Act approved February 10, 1891, and by an Act approved February 8, 1895, and by an Act approved June 29, 1906, and by a Joint Resolution approved June 30, 1906, all of which acts are made a part of this bill of exceptions and printed copies of the statute laws of the United States which purport to be published under the authority of Congress may be referred to.

It was agreed that the above Act with the amendments thereof, include all of the United States Statutes in force in September, 1908, regulating interstate commerce.

The defendant also introduced in evidence an order of the Interstate Commerce Commission dated the second day of June, A. D. 1908, which is hereto annexed and marked "Exhibit A." It was admitted by the plaintiff that the said order of June 2d, 1908, was operative and in full force and effect during the month of September, 1908. But the plaintiff made no admission as to its legal effect.

The defendant also introduced evidence tending to show that prior to September, 1908, it had filed with the Interstate Commerce Commission and had printed and kept open to public inspec-
16 tion, as required by the said Act of Congress and the amendments thereof and the said order of the Interstate Commerce Commission, all the rates, fares and charges for transportation between different points of its route, which included the rates, fares and charges for transportation between Boston, in the Commonwealth of Massachusetts, and Sunapee Lake station, in the State of New Hampshire, and such other evidence relating to such schedules as justified and supported the findings of the court relating thereto, which findings are hereinafter set out.

During the introduction of this evidence the plaintiff admitted that the defendant in the filing, printing and publishing of its schedules of rates, fares and charges for transportation and of privileges and of all rules and regulations which in any way change, affect or determine any part of the aggregate of such rates, fares and charges or the value of the service rendered to any and all passengers, had complied with the provisions of the said Act of Congress regulating interstate commerce and the said amendments thereof and the order of the Interstate Commerce Commission of June 2, 1908. But the plaintiff made no admission as to the legal effect of such compliance.

The defendant also introduced in evidence, the said schedules of rates, fares and charges which included the rates, fares and charges for transportation between Boston, in the Commonwealth of Massachusetts and Sunapee Lake station, in the State of New Hampshire, and which also contained all the privileges and facilities granted or allowed and all rules and regulations which in any way changed, affected or determined any part of the aggregate of such aforesaid rates, fares and charges or the value of the service rendered to any and all passengers.

All the parts of the said schedules which are material to this case are included in this bill of exceptions and were printed in the said schedules in large type. One part or paragraph of the said schedules was as follows:

17 "Regular Baggage Service.

One hundred and fifty pounds of personal baggage, not exceeding $100 in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight, charge will be made as follows."

Immediately following the above paragraph there was printed in the said schedules a table of charges for excess weight of baggage

between all the stations of the defendant, including such charges for excess weight of baggage between said Boston and said Sunapee Lake. It was agreed that it is unnecessary to print in this bill of exceptions the said table of charges. It was also agreed that the said ticket which was purchased and presented at the time the plaintiff's baggage was checked and the said ticket on which the plaintiff rode as a passenger between said Boston and said Sunapee Lake were full tickets.

The remaining parts or paragraphs of the schedules which are material to this case are as follows:

"For excess value, the rate will be one-half of the current excess baggage rate per 100 pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents.

Baggage liability is limited to personal baggage not to exceed one hundred (100) dollars in value for a passenger presenting a full ticket, and fifty (50) dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of checking the baggage."

It is agreed that the charge for transporting baggage exceeding one hundred dollars in value from said Boston to said Sunapee Lake was upon a full ticket during September, 1908, according to the provisions of the said paragraphs of the schedules which have been included in this bill of exceptions, and the said table of charges contained in the said schedules was twenty-five cents
18 for each excess one hundred dollars in value or fraction thereof and was four and 70/100 dollars for baggage of the value of nineteen hundred four and 50/100 dollars.

The defendant also introduced evidence tending to show that there were posted in its station in Boston where the tickets of the plaintiff were purchased and her baggage checked, certain notices which appear in the court's findings of fact.

Officials of the defendant in a position to know about the matter, testified for the defendant on cross-examination by the plaintiff that no other means than those above set forth and those contained in the findings of the court and compliance with the said Acts of Congress regulating interstate commerce and with the said order of the Interstate Commerce Commission were taken by the defendant to bring to the notice of passengers its regulations limiting its liability for loss of baggage during September, 1908.

The above is all the evidence material to this bill of exceptions.

The court made the following findings of fact on request of the plaintiff:

That the loss of the plaintiff's baggage was due to defendant's negligence;

That the defendant failed to prove that the plaintiff, or any one acting for her had actual notice, until after the destruction of her baggage, of the defendant's regulations limiting its liability;

That any reasonable person would infer from the outward appearance of the plaintiff's baggage when tendered to the defendant for transportation, that the value largely exceeded one hundred dollars;

That there was no evidence that any more expensive or different mode of transportation was adopted for baggage the value of which had been declared to exceed $100, than for other baggage;

That no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value.

The defendant duly excepted to the findings of fact made
19 on request of the plaintiff on the ground that there was not sufficient evidence to warrant such findings or any of them.

The court further found at the request of the defendant:

That the defendant previous to and during September, 1908, had printed, published, posted, kept open for public inspection and had filed with the Interstate Commerce Commission in accordance with the provisions of the Act of Congress relating to Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate — Commission, all the rates, fares and charges for transportation between different points, including rates, fares and charges between Boston, Massachusetts and Sunapee Lake Station, New Hampshire, which rates, fares and charges were operative and in force during September, 1908;

That said schedules plainly stated the place between which property and passengers would be carried, including among other places between which property and passengers would be carried, said Boston and said Sunapee Lake Station, and also stated all terminal, storage and all other charges required by the Interstate Commerce Commission, all privileges and facilities granted or allowed and all rates or regulations which in any way changed, affected, or determined any part of the aggregate of such aforesaid rates, fares and charges of the value of the service rendered to any and all passengers, including passengers between said Boston and said Sunapee Lake Station;

That these schedules continued on file and were in full force during the month of September, 1908;

That said schedules were during September, 1908, plainly printed in large type;

That prior to September, 1908, and in accordance with the duly authorized order of the Interstate Commerce Commission dated June 2, 1908, the defendant had placed in the hands and custody of its agent at its station in said Boston, at which station
20 passengers were received for transportation and at which station ticket agents were employed and at which station the plaintiff's agents purchased the ticket on which her baggage was checked, all the rate and fare schedules applying from said station and the terminal and other charges applicable at said station, including the schedules issued by the defendant and those issued by its authorized agents and those in which it concurred; that in accordance with said order during September, 1908, said agent was provided with facilities for keeping a file of such schedules in ready-reference order and was required to keep and did keep such files in complete and ready accessible form, and that said agent was instructed and required to give and whenever inquired of gave information contained in said schedules and lent assistance to seekers for

information therefrom whenever opportunity so to do was presented to him and accorded any and all inquirers opportunity to examine any of said schedules, and did not require or request any such inquirers to assign any reason for such desire; that all this was done by the said agent with all the promptness possible and consistent with the proper performance of the other duties devolving upon him;

That the defendant in the manner aforesaid and in all other ways during the month of September, 1908, and at all other times conformed to the provisions and acts of Congress and the orders and regulations of the Interstate Commerce Commission relative to the printing, publishing, posting, keeping open for public inspection and filing of the schedules of rates, fares and charges for transportation between different points along its routes, including rates, fares and charges between said Boston and said Sunapee Lake Station and relative to all the privileges and facilities granted or allowed by the defendant, including those at said Boston and between said Boston and said Sunapee Lake Station;

That the schedules contained the following provision as to the transportation of baggage and liability of the defendant therefor;

21 "Regular Baggage Service.

One hundred fifty pounds of personal baggage not exceeding one hundred dollars in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight charge will be made as follows."

Immediately following the above paragraph there was printed in the said schedules a table of charges for excess weight of baggage between all the stations of the defendant, including such charges for excess weight of baggage between said Boston and said Sunapee Lake. That the said schedules contained also the following further provisions as to the transportation of baggage and liability of the defendant therefor:

"For excess value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents.

Baggage liability is limited to personal baggage not to exceed one hundred dollars in value for a passenger presenting a full ticket and fifty dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of taking the baggage."

That the charge for transporting baggage exceeding one hundred dollars in value from said Boston to said Sunapee Lake was during September, 1908, according to the said schedules, twenty-five cents for each excess one hundred dollars in value or fraction thereof and amounted to $4.75 for baggage of the value of $1,904.50;

That notices were posted at and near the offices where passengers' tickets were sold in said station in Boston, which read as follows:

"Boston & Maine Railroad.

Notice to the Public.

Freight and Passenger Tariffs, naming rates on Inter-State
22 Traffic, are on file with the Agent, and will be furnished for inspection upon application.

M. T. DONOVAN,
Freight Traffic Manager.

C. M. BURT,
General Freight Agent.

October 15, 1906."

That at the time of the checking of the plaintiff's baggage notices were posted in the baggage room of the station where the baggage was checked, in a conspicuous place and in the sight of persons using the baggage room for the purpose of checking baggage, which notices contained the following statements:

"Boston & Maine R. R.

Excess Baggage Rates. In Effect July 1, 1908.

Excess weight. One hundred and fifty pounds of personal baggage, not exceeding $100 in value (except that in the State of New York, value is limited to $150), will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight, charge will be made as follows, based on the highest first-class limited fare prevailing via route of ticket or the lowest first-class unlimited fare when no limited fares are quoted; except that via Sound Lines, between Boston and New York, first-class unlimited fares will apply throughout the year. The minimum charge between local stations will be 15 cents, and to stations on or via another road 25 cents. Agents will make no charge for excess weight of baggage when total weight is less than 160 lbs. for full ticket, or 80 lbs. for half ticket, allowing 9 lbs. or 4 lbs., as the case may be, to cover a possible variation in the scales; but in all cases where baggage weighs 160 lbs. if full ticket, or 80 lbs. if half ticket actual weight over 150 lbs. or 75 lbs., will be charged for at tariff rates."

That the plaintiff did not declare and stipulate at the time
23 her baggage was checked that it exceeded $100 in value and did not at any time pay any charges for valuation in excess of $100;

That the plaintiff's baggage was not checked with the ticket which the plaintiff used when she was carried as a passenger on the defendant's train, but upon another ticket purchased by her agent at the time the baggage was checked. The ticket upon which the baggage was checked was not given to her in time for her to travel upon that

train and so she purchased another upon which she actually rode; that she did ride upon the same train upon which her baggage was carried—having in fact paid two full first-class fares;

That the plaintiff was not carried as a passenger on the ticket which was used by her agent in checking her baggage, but upon another ticket purchased after the baggage had been checked;

That the plaintiff did not call for her baggage before the expiration of forty or more hours after its arrival at its destination;

That the fire which destroyed the plaintiff's baggage did not occur until after the expiration of twenty-six or more hours after its arrival at Sunapee Lake Station;

That the plaintiff did not make a demand for her baggage at any time before the fire;

That neither the defendant nor any agent or servant of the defendant was guilty of gross negligence;

That the defendant was not negligent in not having provided greater facilities for extinguishing a fire.

The court further found that the defendant did not request any declaration of value from the plaintiff or any person purchasing the ticket for her and presenting the baggage for checking. It also found that no person had by her been appointed as agent with authority to make such declaration of value or who had knowledge of such value.

At the trial and before argument, the defendant duly and seasonably requested the court to rule as follows:

24 "1. That there is not sufficient evidence to warrant a finding for the plaintiff.

2. That the plaintiff cannot recover for the value of baggage exceeding one hundred dollars in value.

3. That the plaintiff lost her right to hold the defendant liable as a common carrier by her delay in calling for her baggage.

4. That the plaintiff did not call for her baggage within a reasonable time.

5. That the liability of the defendant as to baggage in excess of one hundred dollars in value is that of a gratuitous bailee for gross negligence only.

6. That there is not sufficient evidence to warrant a finding of gross negligence.

7. That there is not sufficient evidence to warrant a finding of ordinary negligence.

8. That under the Act of Congress to regulate Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant, the maximum limit of liability in this action is $100.

9. That this court has not jurisdiction nor the right to find either as a fact or in law that any regulation contained in the schedules of rates, fares, etc., duly printed, kept open for public inspection and filed with the Interstate Commerce Commission, is unreasonable."

The court granted the sixth and ninth requests and refused to

give the others of said requests for rulings, and the defendant duly excepted to the refusal to rule as requested.

The court found for the plaintiff in the sum of two thousand one hundred thirty-three and four one-hundredths dollars. The defendant having duly excepted to the refusal to rule as requested by it and to the rulings given on plaintiff's requests, and being aggrieved by the refusal to rule as requested by it and to the granting of the requests of the plaintiff, hereby prays that this its bill of exceptions may be allowed.

By its Attorneys, TRULL & WIER.

Filed December 30, 1910.

Allowed.

ROBERT O. HARRIS, *J. S. C.*

"EXHIBIT A."

Interstate Commerce Commission.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2d day of June, A. D. 1908.

Present:

Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

In the Matter of Modification of the Provisions of Section Six of the Act with Regard to Posting Tariffs at Stations.

Under the authority conferred upon the Commission by section 6 of the act, to modify its requirements as to publishing, posting, and filing of tariffs, the Commission issues the following order, in connection with which it must be understood that each carrier has the option of availing itself of this modification of the requirements of section 6 of the act or of complying literally with the terms of the act. If such modification is accepted by a carrier it must be understood that misuse of the privileges therein extended or frequent misquotation of rates on the part of its agents will result in cancellation of the privileges as to that carrier. It should also be understood that in so modifying the requirements of the act the Commission expects a continuation by carriers of the practice of furnishing tariffs to a reasonable extent to frequent shippers thereunder:

Every carrier subject to the provisions of the act to regulate commerce (excepting those to which special and specific modifications have heretofore been granted) shall place in the hands and custody of its agent or other representative at every station, warehouse, or office at which passengers or freight are received for transportation,

and at which a station agent or a freight agent or a ticket agent is employed, all of the rate and fare schedules which contain rates and fares applying from that station, or terminal or other charges applicable at that station, including the schedules issued by that carrier or by its authorized agent and those in which it has concurred. Such agent or representative shall also be provided with all changes in, cancellations of, additions to, and reissues of such publications in ample time to thus give to the public, in every case, the thirty days' notice required by the act.

Such agent or representative shall be provided with facilities for keeping such file of schedules in ready-reference order, and be required to keep said files in complete and readily accessible form. He shall also be instructed and required to give any information contained in such schedules, to lend assistance to seekers for information therefrom, and to accord inquirers opportunity to examine any of said schedules, without requiring or requesting the inquirer to assign any reason for such desire, and with all the promptness possible and consistent with proper performance of the other duties developing upon him. He shall also furnish upon request therefor quotation in writing of rates via such carrier's line not contained in the tariffs on file at that station. Carrier may arrange for such
27 agent to refer such requests to a proper officer of the company, but the quotation must be furnished within a reasonable time and without unnecessary delay.

Each of such carriers shall also provide and each of such agents or representatives shall also keep on file copies of the current I. C. C. issues of the indices of the tariffs of that carrier.

Each of such carriers shall also provide, either in its indices of tariffs (provided for in Rules 11 and 39 of Commission's tariff regulations, Tariff Circular 15 A) or in separate publication or publications, which must be kept up to date, be given I. C. C. numbers and be filed with the Commission, an index or indices of the tariffs that are to be found in the files at each of its several stations or offices. Such index shall be kept on file and be open to inspection at each of such several stations or offices as hereinbefore provided. If such indices are prepared for a system of road or for a number of stations or offices they must be printed and may be arranged under a system of station numbers and alphabetical list of stations. If arranged for individual stations or offices they may be printed or typewritten. All such indices must be of size 8 by 11 inches.

Each of such carriers shall require its traveling auditors to check up each station's or office's file of tariffs at least once in each six months, unless it employs one or more traveling tariff inspectors who will make such inspections and checks.

Each of such carriers whose lines reach any of the cities in the following list, either over its own rails or by trackage rights, or by boat line, or by ferry, shall provide and maintain at each of said cities so reached by it, and at such additional points as may from time to time be designated by the Commission, complete files of the tariff publications which it issues or is a party to, together with indices of same as hereinbefore required:

Alabama, Montgomery.
Arkansas, Little Rock.
California, San Francisco.
Los Angeles.
Montana, Helena.
Nebraska, Omaha.
New York, New York.
Buffalo.
Indiana, Indianapolis.
Iowa, Des Moines.
Louisiana, New Orleans.
Maine, Portland.
Maryland, Baltimore.
Massachusetts, Boston.
Worcester.
Michigan, Detroit.
Minnesota, St. Paul.
Minneapolis.
Mississippi, Jackson.
Missouri, St. Louis.
Kansas City.
North Carolina, Charlotte.
Ohio, Cincinnati.
Cleveland.

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Colorado, Denver.
Connecticut, Hartford.
Florida, Jacksonville.
Georgia, Atlanta.
Illinois, Chicago.
Springfield.
Oklahoma, Oklahoma City.
Oregon, Portland.
Pennsylvania, Philadelphia.
Pittsburg.
South Carolina, Columbia.
South Dakota, Sioux Falls.
Tennessee, Memphis.
Chattanooga.
Texas, Fort Worth.
Houston.
Utah, Salt Lake City.
Virginia, Richmond.
Washington, Seattle.
Wisconsin, Milwaukee.

Each of such files shall be in charge of an employee who will give information and assistance to those who may wish to consult such file, and each such file shall be kept open and accessible to the public during ordinary business hours and on business days.

Each of such carriers whose lines do not so reach any of the above-named cities shall also provide at at least one point on its line a complete file of the tariffs which it issues or is a party to, together with indices of same as hereinbefore required, which file will be in charge of an employee of the carrier, who will give desired information and assistance to those who may wish to consult such file. This file of tariffs shall be open and accessible to the public during ordinary business hours and on business days.

Each of such carriers shall also provide and cause to be posted and kept posted in two conspicuous places in every station waiting room, warehouse, or office at which schedules are so placed in custody of agent or other representative notices printed in large type and reading as follows:

29 (A) Complete public file (or files) of this company's tariff is (are) located at — in the city of —, or the cities of — and —). The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office, and may be inspected by any person upon application and without the assignment of any reason for such desire.

The agent or other employee on duty in the office will lend any assistance desired in securing information from or in interpreting such schedules.

At exclusive freight stations or warehouses and at exclusive passenger stations or offices carriers may, under this order, place and keep on file only the freight or passenger schedules, respectively, and in such cases the posted notices may be varied to read:

The freight rate (or passenger fare) schedules applying from or at (or from) this station and index of this company's freight (or passenger) tariffs are on file in this office, etc.

Each of such carriers shall also require its agent or other employee in charge of tariffs at each point where complete public file is not kept to post from time to time in a public place in waiting room or office a brief bulletin notice to the effect that rates from that station on certain commodities have been changed.

Compliance with this order as to all available tariffs is required not later than October 1, 1908, and full compliance in every instance not later than January 1, 1909.

A true copy.

EDW. A. MOSELEY,
Secretary.

30 EXHIBIT "B."

COMMONWEALTH OF MASSACHUSETTS.

BOSTON, *September* 18, 1911.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Katharine Hooker vs. Boston & Maine Railroad decided on the sixth day of September, 1911.

HENRY WALTON SWIFT,
Reporter of Decisions.

31 RUGG, *J.*

The plaintiff, an interstate passenger of the defendant, claims damages in excess of two thousand dollars for loss of her baggage occurring through the negligence of the defendant. The defense is that the liability of the defendant is limited to one hundred dollars. The grounds upon which that defense is predicated are these. The defendant had complied with all the provisions of the statutes of the United States known as the Interstate Commerce Act and the orders of the Interstate commerce commission, and among other matters had filed and published schedules of rates, fares and charges, including those in force respecting the stations between which the plaintiff was a traveller. A part of the schedules relating to transportation of baggage was: "Regular Baggage
32 Service. One Hundred Fifty Pounds of Personal Baggage not exceeding one hundred dollars in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. * * * For Excess Value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents. Baggage liability is limited to personal baggage not to

exceed one hundred dollars in value for a passenger presenting a full ticket and fifty dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of taking the baggage." These provisions were filed with the interstate commerce commission and with the agent of the defendant at Boston, where the plaintiff's baggage was checked, and a notice to this effect was conspicuously posted near the defendant's Boston ticket office, and a further notice of limitation of value of baggage was likewise posted in its Boston baggage room. The plaintiff did not, in fact, know of this regulation, nor of any rule limiting the value of baggage to be carried without extra charge. She was not asked for the value of her baggage at the time of checking it or of purchasing her ticket.

The common law rule fixing the rights of the parties is not open to doubt. It is that respecting the transportation of baggage or merchandise a common carrier may relieve itself from
35 many of the heavy responsibilities amounting to insurance cast upon it by the law. It may not exonerate itself, however, by regulation or by contract from liability for its own negligence, but it may make just and reasonable stipulations in good faith as to the value of the property entrusted to its care, and the amount for which it shall respond in case of loss, even though occurring through its own negligence; such stipulation must be brought home to the knowledge of the shipper through either a formal contract, or express or inferable notice, under circumstances warranting the assumption of actual assent. Brown v. Eastern R. R. Co., 11 Cush. 97. Malone v. Boston & Worcester R. R., 12 Gray, 388. Cox v. Central Vermont Ry., 170 Mass. 129-136. Graves v. Adams Express Co., 176 Mass. 280. John Hood Co. v. American Pneumatic Service Co., 191 Mass. 27. Brown v. Cunard Steamship Co., 147 Mass. 58. Hill v. Boston, Hoosac Tunnel & Western R. R., 144 Mass. 284. Graves v. Lake Shore & Michigan So. R. R., 137 Mass. 33. Bernard v. Adams Express Co., 205 Mass. 254. McKahan v. American Express Co., 209 Mass. . Gardiner v. N. Y., C. & H. R. R. R., 201 N. Y. 387. Hart v. Pennsylvania R. R., 112 U. S. 331. The Majestic, 166 U. S., 375. Carr v. Texas & Pacific Ry., 194 U. S. 427. Wither v. Texas & Pacific Ry., 204 U. S. 505. N. Y., C. & H. R. R. R. v. Fraloff, 100 U. S. 24-27. See In the matter of Released Rates, 13 Interstate Com. Com. Rep. 550, and Herbeck-Demer Co. v. Baltimore & Ohio R. R., 17 Interstate Com. Com. 88. Elliott on Railroads (4th Ed.) s. 1510, and cases cited. This rule prevails commonly in the states of the
36 Union, except in Pennsylvania. (Hughes v. Railroad Co. 202 Pa. 222), Iowa, Kansas, Texas and Kentucky. See 1 Hutch. on Carriers (Third Ed.), s. 405, and cases cited.

It is recognized generally that a public notice restricting in any respect the common law liability of the carrier is not binding upon the shipper or passenger, even though known, unless assented to by him. Ordinarily, such assent is not implied merely from knowledge, though this may be a significant circumstance, in the light of the requirements of good faith, in connection with others in war-

ranting the inference of assent. New Jersey Steam Navigation Co. v. Merchants Bank, 6 How. 344-382. Railroad Co. v. Mfg. Co., 16 Wall. 318-329. Judson v. Western R. R., 6 Allen, 486. Buckland v. Adams Express Co., 97 Mass. 124. Faulk v. Columbia, Newberry & Lawrence R. R., 82 S. C. 369. See cases collected in 4 Elliott on Railroad (2nd ed.) s. 1501, and note.

The English rule is slightly more favorable to the carrier, and affirms the binding force of a notice of limitation, if the carrier has done all that is reasonably sufficient to give to the shipper knowledge of the limitation. Henderson v. Stevenson, L. R. 2 H. L. Sc. 470. Richardson, Spence & Co. v. Rawntree (1894), A. C. 217.

It is plain that if the plaintiff's case rested at common law, the action of the superior court would stand, for the fact is expressly found that the plaintiff had no knowledge of the regulation limiting the value of bag-age gratuitously carried by the defendant as
35 a part of the transportation for each passenger.

It is earnestly argued by the defendant that the common law rule is abrogated as to this case, which involves a transportation between two states, by the Federal interstate commerce act. 24 U. S. St. at Large, c. 104, at p. 379. 25 U. S. St. at Large, c. 382, at p. 382. 26 U. S. St. at Large, c. 128, at p. 743. 28 U. S. St. at Large, c. 61, at p. 643. 32 U. S. St. at Large, Pt. I, c. 708, at p. 847. 34 U. S. St. at Large, Pt. I, c. 3591, at p. 584.

It may be conceded that the subject-matter of passenger's baggage in interstate travel is within the control of congress, and any enactment by it would bind the parties. It is not contended that there is any specific regulation respecting it to be found in any act of congress. The precise position of the defendant is that as the limitation of liability for baggage was filed and posted as a part of its schedules for passenger tariff, the limitation thereby became and was an essential part of its rate, from which under the interstate commerce law it could not deviate, and by which the plaintiff was bound, regardless of her knowledge of or assent to it. If the premise is sound, then the conclusion follows, for the public are held inexorably to the rate published, regardless of knowledge, assent or even misrepresentation. Gulf, Colorado & Santa Fe Ry. v. Hefley, 158 U. S. 98. Texas & Pacific Ry. v. Mugg, 202 U. S. 242. Melody v. Great Northern Ry. So. Dak. (127 N. W. 545).

36 The aim of the interstate commerce act has been stated to be to secure for all the public reasonable rates and equality of rates without discrimination or preference, and that subject to these two dominating purposes the carriers and the people are left to their common law freedom of making special contracts according to their interests and necessities. Cincinnati, New Orleans & Texas Pacific Ry. v. Interstate Commerce Commission, 162 U. S. 184-196-197. Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry., 167 U. S. 479-493. N. Y., N. H., & H. R. R. v. Interstate Commerce Commission, 200 U. S. 361-391. Interstate Commerce Com. v. Delaware, Lackawanna & Hudson R. R., 220 U. S. 235-253.

Several expressions are to be found in decisions of the United

States supreme court, which by themselves alone might be taken to indicate that whatever is posted and filed as required by the law thereby is called to the attention of the public, and everybody becomes bound thereby. See for example Louisville & Nashville R. R. v. Mottley, 219 U. S. 467-476. Armour Packing Co. v. U. S. 209 U. S. 56-81. Texas & Pacific Ry. v. Cisco Oil Co., 204 U. S. 449-451. Gulf, Colorado & Santa Fe Ry. v. Hefley, 158 U. S. 98-101. But without examining them in detail, it is apparent from the context that these phrases were intended only to emphasize the general proposition that under the interstate commerce act full publicity of the rates established by the carriers is required, and ample facility given to every interested member of the public to ascertain
37 precisely what those rates are, and that these rates so established under the law are binding upon everybody, and cannot be modified or departed from. Their reasonableness cannot be tried out in an ordinary action in courts between shipper and carrier, but only by petition to the interstate commerce commission. Texas & Pacific Ry. v. Abilene Cotton Oil Co., 204 U. S. 427. Baltimore & Ohio R. R. Co. v. U. S., 215 U. S. 481. It is apparent that the binding force of the limitation as to amount of recovery in case of loss must stand, if it can stand at all, as being a part of the established rate when filed with the commission and with its officers, and thus binding upon all the travelling public without knowledge of their contents, and not upon the proposition that by being posted "in two public and conspicuous places in every depot" the public were thereby constructively notified. This follows from the decision Texas & Pacific Ry. Co. v. Cisco Oil Co., 204 U. S. 449-451, to the effect that such posting is not a condition precedent to the taking effect of the schedule, but that the rate becomes operative upon filing with the interstate commerce commission and furnishing copies to its officers, even though not publicly posted. It is to be noted also that this is not a case where the interstate commerce commission has established a limitation of value of baggage to be carried free as a part of a rate.

The pivotal question then is whether the limitation as to liability for loss of baggage transported without extra charge is a part of the passenger rate or tariff, or whether it is a subsidiary incident
38 to the main matter of fare. We are of opinion that it is not an essential element in the fare for transportation of passengers. Limitation of liability by contract in case of loss has not been abolished by the interstate commerce act. Reasonable agreements in this regard are upheld. This is a subject, about which the policy established in the several states prevails, since as well as before the enactment of the federal statute. Hence an agreement inserted in a bill of lading limiting liability in case of loss has been held invalid if contrary to the law of a state, even though made the basis of a contract of interstate carriage. In Pennsylvania R. R. v. Hughes, 191 U. S. 477, a horse was shipped from Albany in the State of New York to Cynwyd, in the state of Pennsylvania, and was injured by a connecting carrier in the latter state. The bill of lading stated that the freight was to be paid at the lower published rate "upon the ex-

press condition that the carrier assumes liability * * * to the extent only of the following agreed valuation, upon which valuation is based the rate charged for the transportation * * * and beyond which valuation neither said carrier nor any connecting carrier shall be liable in any event." The valuation stated was not exceeding one hundred dollars. Under the law of Pennsylvania, such a limitation was invalid, and a verdict for the owner for ten thousand dollars was sustained in the state court. Upon error to the state court the point was clearly raised that this agreement in the bill of lading was within the protection of the federal interstate commerce clause and act. But it was said by the court, through Mr. Justice Day, after summarizing the requirements of the interstate commerce act, at p. 488, "We look in vain for any regu-
39 lation of the matter here in controversy. There is no sanction of agreements of this character limiting liability to stipulated valuations and until congress shall legislate on it, is there any valid objection to the state enforcing its own regulations upon the subject, although it may to this extent indirectly affect interstate contracts of carriage?" After a review of the cases, it is said further, at p. 491: "The principle is that in the absence of congressional legislation upon the subject, a state may require a common carrier although in the execution of a contract for interstate carriage to use great care and diligence in the carrying of passengers and transportation of goods, and to be liable for the whole loss resulting from negligence in the discharge of its duties. We can see no difference in the application of the principle based upon the manner in which the state requires this degree of care and responsibility, whether enacted into a statute or resulting from the rules of law enforced in the state courts. The state has a right to promote the welfare and safety of those within its jurisdiction by requiring common carriers to be responsible to the full measure of the loss resulting from their negligence, a contract to the contrary notwithstanding." To the same point are Chicago, Milwaukee & St. Paul Ry. Co. v. Solair, 169 U. S. 133, Martin v. Pittsburg & Lake Erie R. R. Co., 203 U. S. 284, and Latta v. Chicago, St. Paul, M. & O. Ry. Co., 97 C. C. A. 198-202. It is true that in none of these cases, so far as appears in the reports, was the limitation of liability inserted in the schedules as filed
40 and posted under the interstate commerce act, but that appears to us to be an immaterial circumstance. The rate was stated in the several contracts of carriage to be based on the value given. It would be hard to conceive of a rate more plainly bound up with the limitation. It is the substance of the matter and not the form which is decisive. A rate established by a carrier and stated in its schedule as filed to be dependent upon certain limitations of liability, can have no higher or different character than a like rate conditioned by a contract upon the same limitation of liability. The carrier cannot make something a rate merely by calling it by that name. It cannot convert that which is in its essence a subject for regulation, according to the law or policy of the several states, into the inexorability of a rate protected by the federal laws, simply by putting it into a schedule which is called a schedule of

rates and tariffs. The defendant seeks the protection of a federal statute. The decisions of the United States Supreme Court are of controlling authority in this respect. The cases we have cited seem to decide, in principle, that the limitation of liability invoked by the defendant is not one which is under the aegis of the interstate commerce act. The subject is one which is not so related to rates of transportation of passengers as to be a part of such a rate. It is governed by the law of the state where the contract of carriage is made and enforced. While this point has not been discussed to any extent, many decisions seem to be based upon the principle we have stated. See Fiedler & Turley v. Adams Express Co., — W.
41 Va. — (71 S. E. 99); Miller v. Chicago, Burlington & Quincy R. R. Co., 85 Neb. 458; Windmiller v. Northern Pacific Ry. Co., 52 Wash. 613; Louisville & Nashville R. R. Co., 132 Ga. 501; Hasbrouck v. N. Y. C. & H. R. R. Co., 202 N. Y. 363. As we have pointed out, there is no doubt that by the common law of this commonwealth the plaintiff was not bound by the limitation of liability of which she was wholly ignorant. She could have been restricted in right of recovery only by express contract or by assent to a known regulation.

The only other exception not expressly waived by the defendant has become immaterial in view of the ground upon which this judgment rests.

Exceptions overruled.

42 COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Superior Court.

Docket Record.

Samuel Williston. 15,251.

KATHARINE HOOKER
vs.
BOSTON & MAINE RAILROAD.

Trull & Wier.

1908, November. Declaration, Answer. 1909, March 6, Interrogatories to president of defendant. April 6, Motion that deposition of Katharine Hooker may be taken upon verbal or oral interrogatories and allowed. Commission issued April 8. 1909, December 20, Motion to amend writ and declaration and allowed. 1910, February 10, Motion to amend answer and assented to. 1910, September 23, Deposition of Katharine Hooker. October 24, Court find for plaintiff for $2,133.04. Time for filing exceptions extended to January 1, 1911. December 30, Defendant's exceptions and allowed. Law. 1911, September 7, Rescript "Exceptions overruled."

1911, October 4, Judgment for plaintiff for $2,253.77 Damage and 84.27 Costs.
1911, October 4, Petition for writ of error and assignment of errors. Bond filed.

In testimony that the foregoing is a true copy of docket record I hereunto set my hand and affix the seal of said Superior Court this twenty-fourth day of October, A. D. 1911.

[Seal The Superior Court.]

WM. C. DILLINGHAM, *Clerk.*

43 COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Superior Court.

No. 15251.

KATHARINE HOOKER
v.
BOSTON AND MAINE RAILROAD.

Petition for Writ of Error, Assignment and Prayer.

Considering itself aggrieved by the final decision of the Superior Court in rendering judgment against it in the above entitled suit, the defendant hereby prays a writ of error from the said decision and judgment to the Supreme Court of the United States and an order fixing the amount of a supersedeas bond.

And the Boston and Maine Railroad assigns the following errors in the records and proceedings of the said case:

In said suit in the said Superior Court, the said Superior Court being the highest court in law or equity of said state in which a decision in said suit could be had, a title, right, privilege and immunity was claimed under a statute of and commission and authority exercised under the United States and the decision was against the title, right, privilege and immunity specially set up and claimed by the defendant under such statute, commission and authority.

The defendant claimed a title, right, privilege and immunity under the Act of the Congress regulating interstate commerce and the amendments thereto, being the Act to regulate commerce approved February 4, 1887 (24 U. S. Statutes at Large, chap. 104) and being the amendments as amended by an Act approved March 2, 1889 (25 U. S. Statutes at Large, chap. 382) and by an Act approved February 10, 1891 (26 U. S. Statutes at Large, chap. 128) and by an Act approved February 8, 1895 (28 U. S. Statutes at Large, chap. 61) and by an Act approved February 19, 1903 (32 U. S. Statutes at Large, chap. 708) and by an Act approved June 29, 1906 (34 U. S. Statutes at Large, chap. 3591) and by a Joint Resolution approved June 30, 1906, and under an order of the Inter-

state Commerce Commission dated June 2, 1908, and under the schedules of rates, fares and charges of transportation printed, published and filed by the defendant, and the decision is against the said title, right, privilege and immunity specially set up and claimed by the defendant.

44 The Court erred in holding and deciding that under the act of Congress to regulate interstate commerce and the amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant, the liability in this action was not limited to one hundred dollars, that there was sufficient evidence to warrant a finding for the plaintiff and that the plaintiff could recover for the value of baggage exceeding one hundred dollars in value.

The said errors are more particularly set forth as follows:

The said Superior Court erred in holding and deciding—

First, that the request of the defendant for a ruling that under the Act of Congress to regulate Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant, the maximum liability in this action is $100, be refused;

Second, that under the Act of Congress to regulate Interstate Commerce and the Amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant the liability in this action was not limited to $100;

Third, that the request of the defendant for a ruling that there was not sufficient evidence to warrant a finding for the plaintiff, be refused;

Fourth, that there was sufficient evidence to warrant a finding for the plaintiff;

Fifth, that the request of the defendant for a ruling that the plaintiff could not recover for the value of baggage exceeding one hundred dollars in value, be refused;

Sixth, that the plaintiff could recover for the value of baggage exceeding one hundred dollars in value;

Seventh, that a finding be made in favor of the plaintiff in the sum of two thousand one hundred thirty-three and four one hundredths dollars.

45 For which errors the defendant, the Boston and Maine Railroad, prays that the said judgment of the said Superior Court entered the first Monday of October, 1911, be reversed and a judgment rendered to accord with the decision and mandate of the Supreme Court of the United States, with costs.

BOSTON AND MAINE RAILROAD,
By LARKIN T. TRULL,
FREDERICK N. WIER,
Its Attorneys.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Superior Court.

Let the writ of error issue upon the execution of a bond by the Boston and Maine Railroad to Katharine Hooker in the sum of five thousand dollars; such bond when approved to act as a supersedeas.

JOHN A. AIKEN,
Chief Justice Superior Court.

October 3d, 1911.

In testimony that the foregoing is a true copy of petition for writ of error, assignment and prayer I hereunto set my hand and affix the seal of said Superior Court this twenty-fourth day of October, A. D. 1911.

[Seal The Superior Court.]

WM. C. DILLINGHAM, *Clerk.*

46 THE BOSTON AND MAINE RAILROAD, a Corporation,
Plaintiff in Error,
vs.
KATHERINE HOOKER, Defendant in Error.

Bond.

Know all men by these presents that we, the Boston and Maine Railroad, as principal, and William F. Berry, of Winchester, in the County of Middlesex and Commonwealth of Massachusetts, and William J. Hobbs, of Malden, in the County of Middlesex in said Commonwealth, as sureties are held and firmly bound unto Katharine Hooker, of Los Angeles, in the State of California, in the sum of five thousand dollars to be paid to the said Katharine Hooker, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated the twenty-eighth day of September, 1911.

Whereas the above named plaintiff in error seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered by the Superior Court of the Commonwealth of Massachusetts in a suit pending in the said Superior Court between said Katharine Hooker, plaintiff, and the said Boston and Maine Railroad, defendant.

Now therefore the condition of this obligation is such that if the above-named plaintiff in error, the said Boston and Maine Railroad, shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its

plea, then this obligation to be void, otherwise to remain in full force and effect.

BOSTON AND MAINE RAILROAD, [CORP. SEAL.]
By C. S. MELLEN, *President.*
WILLIAM F. BERRY. [SEAL.]
WM. J. HOBBS. [SEAL.]

Bond agreed to as satisfactory.
SAMUEL WILLISTON,
Attorney for Katharine Hooker.

Bond approved and to operate as a supersedeas.
JOHN A. AIKEN,
Chief Justice Superior Court.

47 In testimony that the foregoing is a true copy of bond on file and of record in said Superior Court, I hereunto set my hand and affix the seal of said Superior Court, this twenty-fourth day of October, A. D. 1911.

[Seal The Superior Court.]

WM. C. DILLINGHAM, *Clerk.*

48 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the Honorable the Judges of the Superior Court of the Commonwealth of Massachusetts, holden at Cambridge within and for the County of Middlesex, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Katharine Hooker, Plaintiff, and the Boston and Maine Railroad, Defendant, in a plea of Contract wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Boston and Maine Railroad as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given,

that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the third day of October, in the year of our Lord one thousand nine hundred and eleven.

CHARLES K. DARLING,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
JOHN A. AIKEN,
Chief Justice of the Superior Court.

49 COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

And now, here, the Judges of the Superior Court make return of this writ by annexing hereto and sending herewith, under the seal of the said Superior Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I, William C. Dillingham, Clerk of said Superior Court, have hereto set my hand and the seal of said Court this twenty-fourth day of October, A. D. 1911.

[Seal The Superior Court.]

WM. C. DILLINGHAM, *Clerk.*

50 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Katharine Hooker, of Los Angeles, in the State of California, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., within thirty days of the date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Superior Court of the Commonwealth of Massachusetts for the County of Middlesex, wherein the Boston and Maine Railroad is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John A. Aiken, Chief Justice of the Superior Court of the Commonwealth of Massachusetts, this third day of October, in the year of our Lord one thousand nine hundred and eleven.

JOHN A. AIKEN,
Chief Justice of the Superior Court.

CAMBRIDGE, MASSACHUSETTS, *October* 3, 1911.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

SAMUEL WILLISTON,
Attorney for Katharine Hooker.

51 COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

Superior Court.

I, William C. Dillingham, clerk of the said court, do hereby certify that there was lodged with me as such clerk on October 4, 1911, in the matter of the Boston and Maine Railroad, a corporation, plaintiff in error, versus Katharine Hooper, defendant in error, Original petition for writ of error and assignment of errors and prayer, original bond, two copies of the writ of error and citation and of said petition, assignment and prayer and of said bond, one for the defendant and one for this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Cambridge, Massachusetts, this twenty-fourth day of October, 1911.

[Seal The Superior Court.]

WM. C. DILLINGHAM,
Clerk Superior Court, Middlesex County, Massachusetts.

Endorsed on cover: File No. 22,923. Massachusetts Superior Court. Term No. 121. Boston & Maine Railroad, plaintiff in error, vs. Katharine Hooker. Filed October 30th, 1911. File No. 22,923.

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Supreme Court of the United States.

October Term, 1913.

No. 121.

BOSTON & MAINE RAILROAD,
PLAINTIFF IN ERROR,

v.

KATHERINE HOOKER,
DEFENDANT IN ERROR.

Brief for Plaintiff in Error.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON, MASS.

SUBJECT INDEX.

Page.

IV. Upon the ground of estoppel the limit of liability is $100 and would be if the regulations of the plaintiff in error contained only the following provisions:

> "One hundred fifty pounds of personal baggage not exceeding $100 in value will be checked free for each passenger on presentation of a full ticket . . . For excess value the rate will be one half the current excess baggage rate per one hundred pounds for each one hundred dollars or fraction thereof of increased value declared" —

and omitted the paragraph relating to limitation of liability to $100 48

V. The petition for writ of error was addressed properly to the Massachusetts Superior Court 55

CASES CITED.

Supreme Court of the United States.

October Term, 1913.

No. 121.

BOSTON & MAINE RAILROAD,
PLAINTIFF IN ERROR,
v.
KATHERINE HOOKER,
DEFENDANT IN ERROR.

Brief for Plaintiff in Error.

STATEMENT OF THE CASE.

This was a suit in the Superior Court of Middlesex county, Massachusetts, by Katherine Hooker as plaintiff against the Boston & Maine Railroad as defendant. The declaration contained originally two counts in tort. Subsequently the declaration was amended by adding a third count in contract (Record, 2, 3). At the trial the plaintiff elected to proceed on the third count in contract, and waived the other counts (Record, 6, 7). The count in contract is as follows:

> "The plaintiff says the defendant is and was at all times during which the matters herein alleged took place, a common carrier of goods and passengers, operating trains, among other places from Boston, in the Commonwealth of Massachusetts, to Sunapee Lake Station, in the State of New Hampshire. The plaintiff further says that on the

fifteenth day of September, nineteen hundred and eight, in consideration of the purchase by the plaintiff of a first-class ticket for the transportation of a passenger from said Boston to said Sunapee Lake Station, and in further consideration of the sum of twenty-three cents paid by the plaintiff on account of the weight of the baggage hereinafter referred to, exceeding by forty-five pounds the amount of personal baggage which under the defendant's rules the plaintiff was entitled to have transported, defendant agreed to transport from and to such places respectively, the plaintiff's baggage consisting of two trunks and one valise or suit case and their contents and to deliver the said baggage to the plaintiff at said Sunapee Lake Station on presentation of certain baggage checks given by the defendant in Boston on receiving said baggage. And the plaintiff alleges that she purchased such a first-class ticket for transportation from said Boston to said Sunapee Lake Station and that she delivered to the defendant said baggage, paid the defendant the said overweight charges of twenty-three cents, but that nevertheless the defendant neglected and refused and still neglects and refuses to deliver to the plaintiff the said baggage though the plaintiff duly made demand for the same at said Sunapee Lake Station and offered to deliver to the defendant the checks which it had issued for such baggage to the plaintiff's damage as stated in her writ."

The defendant answered a general denial and later (Record, 3) amended its answer by alleging "that the

transportation of baggage alleged in the plaintiff's declaration was interstate and was controlled by the Acts of Congress regulating interstate commerce." It was further alleged in substance that the defendant, prior to September, 1908, had filed with the Interstate Commerce Commission, and had printed and kept open to public inspection, as required by the Acts of Congress, all the rates, fares, and charges for transportation between different points on its route, including those between said Boston and said Sunapee Lake Station; that said schedules stated the places between which property and passengers would be carried, including, among other places, said Boston and said Sunapee Lake Station, and also stated all terminal, storage, and all other charges required by the Interstate Commerce Commission, all privileges and facilities granted and allowed, and all rules and regulations which in any way changed, affected, or determined any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the services rendered to any and all passengers; that these schedules continued on file and were in full force during the month of September, 1908; that they were there September, 1908, plainly printed in large type, and that prior to 1908, and in accordance with the order of the Interstate Commerce Commission, the defendant had placed in the hands and custody of its agent at its station in said Boston, at which station passengers were received for transportation, and at which station ticket agents were employed, all the rates and fare schedule applying from said station, and the terminal and other charges applicable at the station, including the schedules issued by the defendant and those issued by its authorized agents, and those in which it has concurred;

that in accordance with the order of the Interstate Commerce Commission, dated June 2, 1908, the said agent at the said station was provided with facilities for keeping a file of said schedules in ready reference order, and was required to keep, and did keep, such files in complete and readily accessible form, and was required to give information contained in such schedules, and to lend assistance to seekers for information therefrom, whenever opportunity was presented to him; that the defendant, in the manner aforesaid and in all other ways, during the month of September, 1908, and at all other times, conformed to the Act of Congress and the orders and regulations of the Interstate Commerce Commission relative to the rates, fares, and charges for transportation between different points along its routes, including rates, fares, and charges between said Boston and said Sunapee Lake Station, and relative to all the privileges and facilities granted or allowed by the defendant; that the rates, fares, and charges for transportation, and all the terminal, storage, and all other charges required by the Interstate Commerce Commission, and all privileges and facilities granted or allowed, were established, determined, and fixed by the schedules printed, filed, and published as aforesaid; that said schedules contained the following provision as to the transportation of baggage and the liability of the defendant therefor:

"Regular Baggage Service.

"One hundred and fifty pounds of personal baggage, not exceeding $100 in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket.

For excess weight, charge will be made as follows, based on the highest limited ticket, rate prevailing via route of ticket, or the lowest unlimited rate when no limited rates are quoted; except that via Sound Lines, between Boston and New York, unlimited rates will apply throughout the year. The minimum charge between local stations will be 15 cents, and to stations on or via another road, 25 cents.

"For excess value, the rate will be one-half of the current excess baggage rate per 100 pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents.

. . . . . .

"Baggage liability is limited to personal baggage not to exceed one hundred (100) dollars in value for a passenger presenting a full ticket, and fifty (50) dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of checking the baggage."

That on September 15, 1908, or at any other time the plaintiff did not declare and stipulate that her baggage exceeded $100 in value, and did not pay or offer to pay any excess charges for the transportation of personal baggage exceeding $100 in value, and that the "maximum limit of liability in this action is $100."

The case was tried in October, 1910 (Record, 6), and a finding made for the plaintiff in the sum of $2133.04.

The evidence tended to show that the plaintiff was a passenger from Boston to Sunapee Lake on the 15th of

September, 1908, traveling with baggage contained in two trunks and one dress-suit case; that the baggage arrived at the Sunapee Lake Station, and, for the reason that the plaintiff did not have the checks for the baggage with her at the time, it was not called for until after the building in which the baggage was stored by the defendant had been burned; that the baggage of the plaintiff was destroyed in this fire; and that the fire was caused by the negligence of the defendant or its servants.

The defendant in error during the trial (Record, 11) admitted that the plaintiff in error, in the filing, printing, and publishing of its schedules of rates, fares, and charges for transportation and of privileges, and of all rules and regulations which in any way change, affect, or determine any part of the aggregate of such rates, fares, and charges or the value of the service rendered to any and all passengers, had complied with the provisions of the said Act of Congress regulating interstate commerce, and the said amendments thereof, and the order of the Interstate Commerce Commission of June 2, 1908. But she made no admission as to the legal effect of such compliance.

The Court made the following findings of fact on request of the defendant in error (Record, 12–16):

> "That the loss of the plaintiff's baggage was due to defendant's negligence;
>
> "That the defendant failed to prove that the plaintiff, or any one acting for her had actual notice, until after the destruction of her baggage, of the defendant's regulations limiting its liability;
>
> "That any reasonable person would infer from

the outward appearance of the plaintiff's baggage when tendered to the defendant for transportation, that the value largely exceeded one hundred dollars;

"That there was no evidence that any more expensive or different mode of transportation was adopted for baggage the value of which had been declared to exceed $100, than for other baggage;

"That no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value."

The Court further found, at the request of the plaintiff in error:

"That the defendant previous to and during September, 1908, had printed, published, posted, kept open for public inspection and had filed with the Interstate Commerce Commission in accordance with the provisions of the Act of Congress relating to Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate — Commission, all the rates, fares and charges for transportation between different points, including rates, fares and charges between Boston, Massachusetts and Sunapee Lake Station, New Hampshire, which rates, fares and charges were operative and in force during September, 1908.

"That said schedules plainly stated the place between which property and passengers would be carried, including among other places between which property and passengers would be carried, said Boston and said Sunapee Lake Station, and also stated all terminal, storage and all other charges required

by the Interstate Commerce Commission, all privileges and facilities granted or allowed and all rates or regulations which in any way changed, affected, or determined any part of the aggregate of such aforesaid rates, fares and charges of the value of the service rendered to any and all passengers, including passengers between said Boston and said Sunapee Lake Station;

"That these schedules continued on file and were in full force during the month of September, 1908;

"That said schedules were during September, 1908, plainly printed in large type;

"That prior to September, 1908, and in accordance with the duly authorized order of the Interstate Commerce Commission dated June 2, 1908, the defendant had placed in the hands and custody of its agent at its station in said Boston, at which station passengers were received for transportation and at which station ticket agents were employed and at which station the plaintiff's agents purchased the ticket on which her baggage was checked, all the rate and fare schedules applying from said station and the terminal and other charges applicable at said station, including the schedules issued by the defendant and those issued by its authorized agents and those in which it concurred; that in accordance with said order during September, 1908, said agent was provided with facilities for keeping a file of such schedules in ready-reference order and was required to keep and did keep such files in complete and ready accessible form, and that said agent was instructed and required to give and whenever inquired of gave

information contained in said schedules and lent assistance to seekers for information therefrom whenever opportunity so to do was presented to him and accorded any and all inquirers opportunity to examine any of said schedules, and did not require or request any such inquirers to assign any reason for such desire; that all this was done by the said agent with all the promptness possible and consistent with the proper performance of the other duties devolving upon him;

"That the defendant in the manner aforesaid and in all other ways during the month of September, 1908, and at all other times conformed to the provisions and acts of Congress and the orders and regulations of the Interstate Commerce Commission relative to the printing, publishing, posting, keeping open for public inspection and filing of the schedules of rates, fares and charges for transportation between different points along its routes, including rates, fares and charges between said Boston and said Sunapee Lake Station and relative to all the privileges and facilities granted or allowed by the defendant, including those at said Boston and between said Boston and said Sunapee Lake Station;

"That the schedules contained the following provision as to the transportation of baggage and liability of the defendant therefor:

"'Regular Baggage Service.

"'One hundred fifty pounds of personal baggage not exceeding one hundred dollars in value, will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight charge will be made as follows.'

"Immediately following the above paragraph there was printed in the said schedules a table of charges for excess weight of baggage between all the stations of the defendant, including such charges for excess weight of baggage between said Boston and said Sunapee Lake. That the said schedules contained also the following further provisions as to the transportation of baggage and liability of the defendant therefor:

"'For excess value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents.

"'Baggage liability is limited to personal baggage not to exceed one hundred dollars in value for a passenger presenting a full ticket and fifty dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of taking the baggage.'

"That the charge for transporting baggage exceeding one hundred dollars in value from said Boston to said Sunapee Lake was during September, 1908, according to the said schedules, twenty-five cents for each excess one hundred dollars in value or fraction thereof and amounted to $4.75 for baggage of the value of $1,904.50;

"That notices were posted at and near the offices where passengers' tickets were sold in said station in Boston, which read as follows:

"'BOSTON & MAINE RAILROAD.

"'*Notice to the Public.*

"'Freight and Passenger Tariffs, naming rates on Inter-State Traffic, are on file with the Agent,

and will be furnished for inspection upon application.

M. T. DONOVAN,
Freight Traffic Manager.

C. M. BURT,
General Freight Agent.
October 15, 1906.'

"That at the time of the checking of the plaintiff's baggage notices were posted in the baggage room of the station where the baggage was checked, in a conspicuous place and in the sight of persons using the baggage room for the purpose of checking baggage, which notices contained the following statements:

"'BOSTON & MAINE R.R.

"'*Excess Baggage Rates. In Effect July 1, 1908.*

"'Excess weight. One hundred and fifty pounds of personal baggage, not exceeding $100 in value (except that in the State of New York, value is limited to $150), will be checked free for each passenger on presentation of a full ticket, and seventy-five pounds for a half ticket. For excess weight, charge will be made as follows, based on the highest first-class limited fare prevailing via route of ticket or the lowest first-class unlimited fare when no limited fares are quoted; except that via Sound Lines, between Boston and New York, first-class unlimited fares will apply throughout the year. The minimum charge between local stations will be 15 cents, and to stations on or via another road 25 cents. Agents will make no charge for excess weight of baggage when total weight is less than 160 lbs. for full ticket, or 80 lbs. for half ticket, allowing 9 lbs. or 4 lbs., as the case may be, to cover a possible variation in the scales; but in all cases where baggage weighs 160 lbs. if full ticket,

or 80 lbs. if half ticket actual weight over 150 lbs. or 75 lbs., will be charged for at tariff rates.'

"That the plaintiff did not declare and stipulate at the time her baggage was checked that it exceeded $100 in value and did not at any time pay any charges for valuation in excess of $100;

"That the plaintiff's baggage was not checked with the ticket which the plaintiff used when she was carried as a passenger on the defendant's train, but upon another ticket purchased by her agent at the time the baggage was checked. The ticket upon which the baggage was checked was not given to her in time for her to travel upon that train and so she purchased another upon which she actually rode; that she did ride upon the same train upon which her baggage was carried — having in fact paid two full first-class fares."

The Court further found that the defendant did not request any declaration of value from the plaintiff or any person purchasing the ticket for her and presenting the baggage for checking. It also found that no person had by her been appointed as agent with authority to make such declaration of value or who had knowledge of such value.

The Court found for the plaintiff in the sum of $2133.04 (Record, 17).

Thereupon the case was taken to the Supreme Judicial Court upon the exceptions of the plaintiff in error. These exceptions were overruled (Record, 6) and in the opinion the federal question which was raised by the answer and by the exceptions was the only one passed upon by that Court (Record, 20–25).

ASSIGNMENT OF ERRORS.

The petition for the writ of error and the assignment of errors is found on pages 26 and 27 of the record. The errors assigned and relied upon are as follows:

The Superior Court erred in holding and deciding —

"First, that the request of the defendant for a ruling that under the Act of Congress to regulate Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant, the maximum liability in this action is $100, be refused;

"Second, that under the Act of Congress to regulate Interstate Commerce and the Amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares and charges of transportation printed, published and filed by the defendant the liability in this action was not limited to $100;

"Third, that the request of the defendant for a ruling that there was not sufficient evidence to warrant a finding for the plaintiff, be refused;

"Fourth, that there was sufficient evidence to warrant a finding for the plaintiff;

"Fifth, that the request of the defendant for a ruling that the plaintiff could not recover for the value of baggage exceeding one hundred dollars in value, be refused;

"Sixth, that the plaintiff could recover for the value of baggage exceeding one hundred dollars in value;

"Seventh, that a finding be made in favor of the plaintiff in the sum of two thousand one hundred thirty-three and four one hundredths dollars."

The requests for rulings referred to in the assignment of errors were duly and seasonably made at the trial and are printed on page 16 of the record.

EXTRACTS FROM THE INTERSTATE COMMERCE ACTS.

The essential parts of the Act to regulate commerce, approved February 4, 1887, as amended by the Act of June 29, 1906, and in force at the time when the transaction in this case occurred, are as follows:

Section 2 in part reads:

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3 in part provides:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make

or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 6 in part provides:

"That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing *all the rates, fares, and charges for transportation* between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and *shall also state* separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed *and any rules or regulations*

which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

. . . . . .

"No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers, or property, except such as are specified in such tariffs: . . ."

Section 10 in part provides:

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

"Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and wilfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular

rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court."

Section 20 in part provides:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall

have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof."

Section 22 as amended by the Act of February 8, 1895, in part provides:

"That nothing in this act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provision of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares or charges on which joint interchangeable mileage tickets are based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of this act."

Section 1 of the Act of February 19, 1903, entitled, "An Act to further regulate commerce with foreign nations and among the States," commonly known as the Elkins Act, as amended by section 2 of the Act of June 29, 1906, c. 3591, 34 St. 584, provides that:

"The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts, or

strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction, etc., . . . and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce, and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction, etc., . . .

"Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act."

SYNOPSIS OF ARGUMENT.

The plaintiff in error contends that the maximum limit of liability in this case is $100 for the reasons that the schedules of the defendant, duly filed with the Interstate Commerce Commission, contained the following rates, parts of rates, and regulations affecting or determining rates, fares, and charges:

> "One hundred fifty pounds of personal baggage not exceeding one hundred dollars in value will be checked free for each passenger on presentation of a full ticket.
>
> "For excess value the rate will be one half the current excess baggage rate per hundred pounds for each hundred dollars or fraction thereof of increased value declared. . . .
>
> "Baggage liability is limited to personal baggage not to exceed $100 in value for a passenger presenting a full ticket . . . unless a greater value is declared and stipulated by the owner and excess charges thereon paid at the time of taking the baggage."

And that the defendant in error did not declare and stipulate a greater value which the defendant in error now claims to have been $1904.50, and did not pay the excess charges, amounting to $4.75.

The plaintiff in error bases this contention upon the following propositions:

I.

Congress has assumed exclusive jurisdiction of the subject matter in issue, thereby making the determination of the effect and validity of the baggage regulations of the plaintiff in error a federal question.

II.

Rates, parts of rates, and regulations affecting or determining rates, fares, and charges, or the value of the service rendered, have the force of law, and therefore enter into and become a part of all contracts for interstate transportation.

III.

The regulations contained in the schedules of the plaintiff in error providing that —

> "One hundred fifty pounds of personal baggage not exceeding one hundred dollars in value will be checked free . . .
>
> "For excess value the rate will be one half the current excess baggage rate per hundred pounds for each hundred dollars or fraction thereof . . .
>
> "Baggage liability is limited to personal baggage not to exceed $100 in value for a passenger presenting a full ticket . . . unless a greater value is declared and stipulated by the owner and excess charges thereon paid at the time of taking the baggage," —

have the force of law for the following reasons:

(A)

Such regulations are not void, as being contrary to the common law, or public policy, or any federal statute.

1. The reasonableness of the regulations is not in issue.

2. The regulations do not offend any principle of common law or public policy.

3. The regulations do not offend any federal statute.

(B)

Such regulations are parts of the rates and are regulations affecting or determining rates, fares, and charges, or the value of the service rendered, and when contained in the schedules of the plaintiff in error had the force of law, and entered into and became a part of the contract with the defendant in error.

IV.

Upon the ground of estoppel the limit of liability is $100 and would be if the regulations of the plaintiff in error contained only the following provisions:

> "One hundred fifty pounds of personal baggage not exceeding $100 in value will be checked free for each passenger on presentation of a full ticket . . .
>
> "For excess value the rate will be one half the current excess baggage rate per one hundred pounds for each one hundred dollars or fraction thereof of increased value declared," —

and omitted the paragragh relating to limitation of liability to $100.

V.

The petition for writ of error was addressed properly to the Massachusetts Superior Court.

ARGUMENT.

I.

Congress has assumed exclusive jurisdiction of the subject matter in issue, thereby making the determination of the effect and validity of the baggage regulations of the plaintiff in error a federal question.

(A)

Congress has assumed jurisdiction of railroad regulations as to interstate shipments which affect or determine rates, fares, and charges, and has provided, in section 6 of the Act to regulate commerce, approved February 4, 1887, as amended by section 2 of the Act of June 29, 1906, that "every common carrier shall file with the commission and print and keep open for public inspection schedules of rates, fares and charges for transportation," and that—

> "the schedules printed as aforesaid . . . shall also state . . . all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges or the value of the service rendered to the passenger, shipper or consignee."

(B)

Congress has also assumed jurisdiction of the liability of railroads for loss of property in interstate transportation by section 20 of the Act to regulate commerce, approved February 4, 1887, as amended by section 7 of the Act of June 29, 1906 (the Carmack amendment of the Hepburn Act). The essential provisions of this section are as follows:

> "Section 20. . . . That any railroad . . . receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it . . . and no

> contract, receipt, rule or regulation shall exempt such . . . railroad . . . from the liability hereby imposed. Provided that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."

It has been decided that by the Carmack amendment Congress has assumed jurisdiction of all cases involving loss or damage to property in interstate transportation. The Massachusetts decision of the case at bar was based upon the assumption that Congress had not taken jurisdiction of this subject.

The opinion reads (Record, 25):

> "The cases we have cited seem to decide in principle that the limitation of liability invoked by the defendant is not one which is under the ægis of the Interstate Commerce Act. The subject is one which is not so related to rates of transportation of passengers as to be a part of such rates. It is governed by the law of the state where the contract of carriage is made and enforced."

This question has been settled since by this Court in the case of *Adams Express Co.* v. *Croninger*, 226 U.S. 491.

It has been decided also in the case of *Missouri, Kansas & Texas Ry. Co.* v. *Harriman*, 227 U.S. 657, on page 672, in the following language:

> "The liability sought to be enforced is the liability of an interstate carrier for loss or damage under an interstate contract of shipment declared by the Carmack Amendment of the Hepburn Act of June 29,

1906. The validity of any stipulation in such a contract which involves the construction of the statute and the validity of or limitation upon the liability thereby imposed is a Federal question to be determined under the general common law, and, as such, is withdrawn from the field of State law on legislation."

The plaintiff in error complied with all the requirements of the Carmack amendment, which provides that the railroad shall issue a receipt or bill of lading. In the case at bar it appears from the evidence of the defendant in error that the checks for the baggage were received by her after her arrival at her destination (Record, 8), and the plaintiff in error admitted that such checks were issued (Record, 10). These checks were considered by both parties as receipts for the baggage.

II.

Rates, parts of rates, and regulations affecting or determining rates, fares, and charges, or the value of the service rendered, have the force of law, and therefore enter into and become a part of all contracts for interstate transportation.

The Interstate Commerce Act provides that the schedules of railroads which are to be filed with the Interstate Commerce Commission shall contain, *first*, rates, fares, and charges, and, *second*, "any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges or the value of the service rendered to the passenger, shipper or consignee."

It is thus seen that both rates and regulations affecting rates are treated alike in order to accomplish the general purpose of the legislation, which was the prevention of discrimination and unreasonable rates.

In the case of *Texas & Pacific Ry. Co.* v. *Mugg*, 202 U.S. 242, at page 245, this Court uses the following language:

> "One who has obtained from a common carrier transportation of goods from one state to another at a rate specified in the bill of lading, less than the published schedule of rates filed with and approved by the Interstate Commerce Commission, and in force at the time, whether or not he knew that the rate obtained was less than the scheduled rate, is not entitled to recover the goods, or damages for their detention, upon the tender of payment of the amount of charges named in the bill of lading, or of any sum less than the scheduled charges; in other words whatever may be the rate agreed upon, the carrier's lien on the goods is, by force of the Act of Congress, for the amount fixed by the published schedule of rates and charges."

This Court, in referring to the case last cited, in its opinion in the case of *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, at page 445, uses the following language:

> "It was here held that the rate fixed in the schedule filed pursuant to the Act to Regulate Commerce was controlling,— that it was beyond the power of the carrier to depart from such rates in

favor of any shipper, and that the erroneous quotation of rates made by the agent of the railroad did not justify recovery, since to do so would be in effect enabling the shipper, whose duty it was to ascertain the published rate, to secure a preference over other shippers, contrary to the Act to Regulate Commerce."

In the case of *Armour Packing Co.* v. *United States*, 209 U.S. 56, the Court says, on page 81:

> "If the rates are subject to secret alteration by specific agreement, then the statute will fail of its purpose to establish a rate duly published, known to all, and from which neither shipper nor carrier may depart."

The following language was used in the case of *Kansas City Southern Ry. Co.* v. *Carl*, 227 U.S. 639, on page 652:

> "He [the shipper] must take notice of the rate applicable and actual want of knowledge is no excuse. The rate, when made out and filed, is notice, and its effect is not lost, although it is not actually posted in the station."

THE REGULATIONS CONTAINED IN THE SCHEDULES ENTER INTO AND BECOME A PART OF THE CONTRACT FOR INTERSTATE TRANSPORTATION.

This is but another way of saying that such regulations have the force of law.

This Court states this principle in the case of *Armour Packing Co.* v. *United States*, 209 U.S. 56, at page 82,

in referring to the Interstate Commerce Act in the following language:

> "The statute being within the constitutional power of Congress and being in force when the contract was made, is read into the contract and becomes a part of it."

This is the principle enunciated in *Texas & Pacific Ry. Co.* v. *Mugg, supra*, in which it was held that all parties were bound by the rates in the schedules on file even though a lower rate was specified in the bill of lading and the shipper was ignorant of the rates in the schedules.

This argument disposes of the finding of the trial Court (Record, 12) —

> "that the defendant failed to prove that the plaintiff, or anyone acting for her, had actual notice, until after the destruction of her baggage of the defendant's regulations limiting its liability."

This argument also disposes of the findings of the trial Court (Record, 12, 13) —

> "That any reasonable person would infer from the outward appearance of the plaintiff's baggage when tendered to the defendant for transportation that the value largely exceeded one hundred dollars.
>
> . . . . . .
>
> "That no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value."

In further considering the above findings of fact attention is called to the case of *Hart* v. *Pennsylvania*

R.R. Co., 112 U.S. 331, in which it was assumed that the horses, to recover the value of which a suit was brought, were race horses. The record in this case shows that the agent of the railroad who received the horses knew that they were race horses of great value. In the opinion the Court says, on page 337:

> "Although the horses, being race-horses, may, aside from the bill of lading, have been of greater value than that specified in it, whatever passed between the parties before the bill of lading was signed was merged in the valuation it fixed; and it is not asserted that the plaintiff named any value, greater or less, otherwise than as he assented to the value named in the bill of lading, by signing it. The presumption is conclusive that, if the liability had been assumed on a valuation as great as that now alleged, a higher rate of freight would have been charged. The rate of freight is indissolubly bound up with the valuation."

And further, on page 340:

> "It is just to hold the shipper to his agreement, fairly made, as to value, even where the loss or injury has occurred through the negligence of the carrier. The effect of the agreement is to cheapen the freight and secure the carriage, if there is no loss; and the effect of disregarding the agreement, after a loss, is to expose the carrier to a greater risk than the parties intended he should assume."

This proposition has been recently affirmed in the case of *Kansas City Southern Ry. Co.* v. *Carl*, 227 U.S. 639, at page 656, in the following language:

"The defendant in error must be presumed to have known that he was obtaining a rate based upon a valuation of five dollars per hundredweight as provided by the published tariff. This valuation was conclusive, and no evidence tending to show an under valuation was admissible."

III.

The regulations contained in the schedules of the plaintiff in error, providing that —

"One hundred fifty pounds of personal baggage not exceeding one hundred dollars in value will be checked free for each passenger on presentation of a full ticket . . .

"For excess value the rate will be one half the current excess baggage rate per hundred pounds for each hundred dollars or fraction thereof of increased value declared . . .

"Baggage liability is limited to personal baggage not to exceed $100 in value for a passenger presenting a full ticket . . . unless a greater value is declared and stipulated by the owner and excess charges thereon paid at the time of taking the baggage," —

have the force of law for the following reasons:

(A)

Such regulations are not void as being contrary to the common law or public policy or any federal statute.

1. The reasonableness of the regulations is not in issue.

2. The regulations do not offend any principle of common law or public policy.

3. The regulations do not offend any federal statute.

(B)

Such regulations are parts of the rates and are regulations affecting or determining rates and the value of the service rendered, and when contained in the schedules of the plaintiff in error had the force of law and entered into and became a part of the contract with the defendant in error.

(A)

Such regulations are not void as being contrary to the common law or public policy or any federal statute.

(1)

The reasonableness of the regulation is not in issue.

The question as to whether or not a rate, part of a rate, or a regulation affecting or determining a rate is reasonable in fact, will not be considered by this Court, but its reasonableness must be assumed from the fact that it has been lawfully filed with the Interstate Commerce Commission. This point has been affirmed in so many recent cases that it does not require extended argument.

Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U.S. 426.

Kansas City Southern Ry. Co. v. *Carl*, 227 U.S. 639.

Such a rate, part of a rate, or regulation affecting or determining a rate, must be upheld and enforced by this

Court unless it appears to offend in principle some doctrine of the common law or of public policy or some federal statute.

(2)

The regulations do not offend any principle of common law or public policy.

This was settled by the leading case of *Hart* v. *Penn. R.R. Co.*, 112 U.S. 331.

It has long been considered a necessary incident of the common carrier's business that it should have the right to make the shipper disclose value of his goods as a condition precedent to the making of a contract for their transportation in order to charge such extra fare as the additional risk fairly justified.

New York Central & Hudson River R.R. Co. v. *Fraloff*, 100 U.S. 531:

The opinion reads, on page 533:

> "and in order that such regulation may be practically effective, and the carrier be advised of the full extent of its responsibility, and, consequently of the degree of precaution necessary upon its part, it may rightfully require as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier at its option can make such addition charge as the risk fairly justified."

(3)

The regulations do not offend any federal statute.

Such a regulation limiting the liability of a common carrier as is in issue in the case at bar does not offend section 20 of the Act to regulate commerce, approved February 4, 1887, as amended by section 7 of the Act of June 29, 1906 (the Carmack amendment of the Hepburn Act). This has been expressly held in the case of *Adams Express Co.* v. *Croninger*, 226 U.S. 491, and in subsequent cases, to and including that of *Missouri, Kansas & Texas Ry. Co.* v. *Harriman*, 227 U.S. 657.

The circumstances usually attending the delivery of baggage to railroads prove the necessity of a regulation such as that of the plaintiff in error. Such a regulation affords the only effective method of impartially enforcing the duty of the railroad to maintain a due proportion between its charges and the risk it assumes in relation to personal baggage. These circumstances are in part as follows: the necessity of providing the public with rapid transportation; the insistence of passengers that there should be as little delay as possible in obtaining tickets and checking baggage; the general prevailing conditions of congestion at stations previous to the departure of many trains; the custom of passengers of arriving at stations a short time only before the time for their trains to leave; the fact that many passengers arrange to have their baggage delivered to the railroad by agents who have no actual knowledge of its value (as was the fact in the case at bar); the fact that baggage,

being essentially personal belongings (Fetter on Carrier of Passengers, vol. II, sec. 604; *Blumantle* v. *Fitchburg R.R.*, 127 Mass. 322), is of an indefinite and optional value or of a value peculiarly within the knowledge of the passenger and not to be determined by the railroad except by methods involving trouble and expense out of all proportion to the amount involved in most contracts for transportation.

The spirit of this argument finds support both in the leading case of *Hart* v. *The Railroad*, and in U.S. Revised Statutes, sec. 4281, which the Hart decision cites in the following language (112 U.S. 331, at page 342):

> "As relating to the question of the exemption of a carrier from liability beyond a declared value, reference may be made to Sec. 4281 of Revised Statutes of the United States (a re-enactment of section 69 of the act of February 28, 1871, ch. 100, 16 Stat. 458) which provides that if any shipper of certain enumerated articles, which are generally articles of large value in small bulk, 'shall lade the same as freight or baggage without at the time of such lading giving to the master, clerk, agent or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered upon the bill of lading thereof, the master or owner of such vessel shall not be liable as carriers thereof in any form or manner, nor shall such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered.'
>
> "The principle of this statute is in harmony with the decision at which we have arrived."

(B)

Such regulations are a part of the rates and are regulations affecting or determining rates, fares, and charges, or the value of the service rendered, and when contained in the schedules of the plaintiff in error had the force of law and entered into and became a part of the contract with the defendant in error.

The development of the law upon this point is important in this connection.

The rule allowing a common carrier to graduate its rates according to the value of the goods shipped, that is, according to the extent of the risk it assumes in relation to goods accepted by it for shipment, has been sanctioned by this Court whenever such a rule has been before it for interpretation. It is recognized in the case of *New York Central & Hudson R.R. Co.* v. *Fraloff*, 100 U.S. 531. In this case the further rule was announced that the carrier may demand a disclosure of the extent of the risk it is about to assume as a condition precedent to making a contract of carriage of baggage.

Later, in the case of *Hart* v. *Pennsylvania R.R.*, 112 U.S. 331, it was decided, in effect, that a carrier may include in a contract based on a minimum rate of charges, a regulation limiting the extent of the risk it assumes to a stated sum, unless a greater valuation is declared by the shipper and excess charges paid.

The purpose of the extension of this rule, as stated in these two cases, was to enable the carrier to make its rates as based upon valuation, or based upon the risk it assumed, "*practically effective*," and to enable the

carrier to secure "*a due proportion between the amount for which it may be responsible and the freight it receives.*" That is, in both cases it was attempted to adjust the general principle of law, that charges paid by the shipper should bear a proper relation to the risk assumed by the carrier, to the actual needs of the transportation business.

The Interstate Commerce Act of 1887 and its subsequent amendments were enacted not for the purpose of establishing new principles of law in the operation and control of the business of interstate transportation, but for the purpose of applying the principles calling for equality of treatment to all shippers under similar conditions already established at common law to the present needs of the railroad business.

The object of this legislation was to establish and maintain, free from preferences and discrimination, a just and reasonable relationship between the rates, fares, and charges paid by the public and the service rendered by the railroads.

New York, New Haven & Hartford R.R. v. *Interstate Com. Com.*, 200 U.S. 361.

Texas & Pacific Ry. v. *Abilene Cotton Oil Co.*, 204 U.S. 426.

Louisville & Nashville Ry. v. *Motley*, 219 U.S. 467.

When the filing of schedules of rates — regulations affecting rates — was made obligatory on the part of the carrier, this Court held, in order to accomplish the purpose of the Act, that the rates and the regulations affecting rates when filed under the provisions of this

Act, have the force of law, and are conclusive and binding on all shippers and passengers, regardless of actual knowledge.

Texas & Pacific Ry. v. *Mugg*, 202 U.S. 242.
Chicago & Alton Ry. Co. v. *Kirby*, 225 U.S. 155.
Adams Express Co. v. *Croninger*, 226 U.S. 491.
Wells, Fargo & Co. v. *Neiman-Marcus Co.*, 227 U.S. 469.
Kansas City Southern Ry. Co. v. *Carl*, 227 U.S. 639.
Missouri, Kansas & Texas Ry. Co. v. *Harriman*, 227 U.S. 657.

Thus it is evident that the effort to adjust the law to the actual conditions prevailing between the public and the common carriers, has been the great influence in the development of these rules, and it is contended that the question upon which the determination of the controversy at issue depends should be considered from the same point of view.

This question, which is the only question that remains to be discussed on this branch of the case, is this: whether it was the duty of the plaintiff in error to include in its schedules the regulation which is in issue. In other words, whether it is such a rate or regulation affecting or determining a rate or the value of the service rendered as Congress intended should be filed in the rate schedules. Another way of stating this question is as follows: whether such a regulation as was approved in the Fraloff, Hart, Croninger, Carl, and Harriman cases, and as is in issue in the case at bar, is such a part

of the rate of the plaintiff in error, or is such a regulation affecting or determining its rates or the value of the service rendered as to have, by virtue of being filed in the schedules, in accordance with the Interstate Commerce Act, the force of law, and to be binding and conclusive on all passengers, regardless of actual knowledge.

In this connection attention is called to the provisions of the Interstate Commerce Act relating to schedules. Section 6 of the Act, as amended by section 2 of the Act of June 29, 1906, provides as follows:

> "That every common carrier, subject to the provisions of this act, shall file with the Commission created by this act, and print and keep open to public inspection schedules showing all rates, fares and charges for transportation. . . .
>
> "The schedules printed as aforesaid by any common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges the Commission may require, all privileges or facilities granted or allowed *and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper, or consignee.* . . ."

Congress must have intended that rates and regulations affecting or determining rates should include baggage rates and baggage regulations affecting or determining rates. If anything were needed in addition to the phraseology of the Act as above quoted, it is

shown by the provisions of section 22 of the Act as amended by the Act of February 8, 1895, the essential parts of which are as follows:

> "That nothing in this act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, *with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles.* But before any common carrier, subject to the provision of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares or charges on which joint interchangeable mileage tickets are based, *together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of this act.*"

The Interstate Commerce Commission also has provided specifically that the schedules filed under the authority of the Act shall contain excess baggage rates. In the second paragraph of section (9) in regulation 34 of the "Regulations Governing the Construction and Filing of Freight Tariffs, etc.," effective April 15, 1908 (pp. 39, 41), it is provided:

> "34. Tariff shall contain in the order named
>
> "(9) . . . . . .
>
> "No rule or regulation shall be included which in any way or in any terms authorize substituting for any fare named in the tariff as are found in

any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules shall include the general rules governing stop-over privileges and the *general baggage regulations*, and also schedules of excess baggage rates, unless such excess baggage rates are shown in tariff in connection with the fares."

1. The regulations of the plaintiff in error here at issue affect or determine its rates, fares, and charges, and for that reason the plaintiff in error was required to file them in its schedules.

This is only repeating the Act, which provides that the schedules shall state any rules or regulations which in any wise change, affect, or determine any part or the aggregate of the rates, fares, and charges.

These regulations of the plaintiff in error affect or determine the rates, fares, and charges for the reason that they affect the service to be rendered for the particular rate, fare, or charge paid, or they determine the price to be paid for a particular service rendered. They determine the relation of the price paid to the service rendered.

The service rendered by the carrier includes in part the transportation of the passenger, and in part the transportation of a limited number of pounds of baggage, and in part the extent to which the carrier must respond for the loss of or damage to this baggage, that is, the risk which the carrier assumes in relation to the baggage as based upon valuation.

That the extent to which the carrier must respond in damages for loss of or damage to goods by reason of

his negligence, or otherwise, is an essential part of the rate charged by the carrier, is borne out by the opinion of the Interstate Commerce Commission as contained in a decision styled "*In re Released Rates*," 13 I.C. Rep. 550, in which the following language is found on page 560:

> "But it is obvious that a carrier may establish a scale of charges applicable to the specific commodity and graduated reasonably according to value. *The cost of carriage is not the only element in the carrier's charges — a carrier is subject to a certain insurance liability.* It would seem proper therefore that when its insurance risk is enlarged by reason of increased value of the goods entrusted to it, it may provide for a reasonable increase in its charges. We hold that it is in contravention of neither the letter nor the spirit of the law for the carrier to provide a higher rating for goods of special value than it applies to goods of the same class but of lower value."

It is further stated in the same decision, on page 565 that —

> "A certain differential between rates which leave the carrier's liability unlimited and rates which provide for a limited liability is obviously proper, but the differential should exactly measure the additional *insurance risk which the carrier assumes* when the liability is unlimited."

So it has been held through a long list of decisions that the valuation, or the amount to which the carrier was to be answerable in damages, was an essential element in determining the rate paid by the shipper.

The following quotations are taken from a few of such decisions:

"A common carrier may prescribe regulations to protect itself against imposition and fraud and fix a rate of charges proportionate to the *magnitude of the risk he may have to encounter.*"

York Co. v. *Central R.R.*, 3 Wallace, 107, 112.

"The stipulation that they would not under any circumstances be held liable beyond the sum of two hundred dollars for injury to or loss of any single animal, was a proper and lawful mode of securing a due proportion between *the amount for which they might be responsible* and the freight which they received and of protecting themselves against extravagant and fanciful valuations."

Squire v. *New York Central R.R. Co.*, 98 Mass. 239, 245.

"It is undoubtedly competent for carriers of passengers by specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any statute or their duties to the public, to protect themselves against liability as insurers for baggage exceeding a fixed amount in value, except upon additional compensation proportional to the risk.

"And in order that such regulation may be practically effective and the carrier be advised of the

full extent of its responsibilities and consequently of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value, and if the value disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation the carrier at its option can make such *additional charge as the risk fairly justifies.*"

New York Central & Hudson River R.R. v. *Fraloff*, 100 U.S. 531, 533.

"The presumption is conclusive that if the liability had been assumed on a valuation as great as that now alleged a higher rate of freight would have been charged. *The rate of freight is indissolubly bound up with the valuation.* If the rate of freight named was the only one offered to the defendant it was because it is a rate measured at a valuation expressed."

Hart v. *Penn. R.R. Co.*, 112 U.S. 331, 337.

"The distinct ground of our decision in the case at bar is, that where a contract of the kind, signed by the shipper, is fairly made, agreeing on the valution of the property carried with *rates of freight based on the condition that the carrier assumes liability only to the extent of the agreed valuation*, even in the case of loss or damage by the negligence of the carrier, the contract will be

upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives and of protecting himself against extravagant and fanciful valuations."

Hart v. *Penn. R.R. Co.*, 112 U.S. 331, 343.

"In the leading case of *Hart* v. *The Railroad* the right of the carrier to adjust the rate to the valuation which the shipper places upon the thing to be transported, is the very basis upon which a limitation of liability in the case of loss or damage is rested. *This is an administrative principle in rate making* recognized as reasonable by the Interstate Commerce Commission *and is the basis upon which many tariffs filed with the Commission are made.*

"It follows, therefore, that when a carrier has filed rate sheets which showed two rates based upon valuation upon a particular class of traffic, that it is legally bound to apply that rate which corresponds to the valuation. If the shipper desires the lower rate he must disclose the valuation, or in the absence of knowledge the carrier has a right to assume that the higher of the rates placed upon value apply. In no other way can it protect itself in *its right to be compensated in proportion to its insurance risk.*"

Kansas Southern Ry. v. *Carl*, 227 U.S. 639, 650.

"When a carrier graduates its rates by value and has filed its tariff showing two rates applicable

to a particular commodity or class of articles, based upon a difference in valuation, the shipper must take notice for the valuation automatically determined which of the rates is the lawful rate."

Missouri, Texas Ry. v. *Harriman*, 227 U.S. 657, 671.

Giving a regulation, such as is in issue in this case, the force and the effect of a rate, of which it must be concluded to be an essential part, is doing no more than to bind the public by a regulation which the carrier has always had the power to enforce provided it gave the public actual or inferable notice of such a regulation. The *notice* required at common law has been provided for by the general effect of the Hepburn Act. Such seems to be the conclusion to which this Court has come as expressed recently.

"To the extent that such limitations are not forbidden by law, they become, when filed, a part of the rate."

"The defendant in error must be presumed to have known that he was obtaining a rate based upon a valuation of five dollars per hundred weight as provided by the tariff. This valuation was conclusive and no evidence tending to show an undervaluation was admissible."

Kansas City Southern Ry. v. *Carl*, 227 U.S. 639, 654, 656.

This conclusion has also been reached in the recent case of *Barstow* v. *New York, New Haven & Hartford*

R. R. Co., Supreme Court App. Div., state of New York, October, 1913.

This argument disposes of the finding of the trial Court (Record, 13): "That there was no evidence that any more expensive or different mode of transportation was adopted for baggage the value of which had been declared to exceed $100 than for other baggage."

The cases above cited do not base their decisions upon the theory that upon the payment of excess charges a different mode of transportation would be adopted, but on the ground that because of payment of the additional charges the railroad contracted to assume a greater liability and to increase its insurance risk.

2. The regulations of the plaintiff in error affect or determine the value of the service rendered, and for that reason it was required to file them with its schedules.

Attention is now called to the further wording of the statute that the schedules shall state all rules and regulations which affect or determine *the value of the service rendered*.

The argument and cases cited under heading 1, support both propositions: that the regulations affect and determine (1) the rates, fares, and charges, and (2) the value of the service rendered.

The word "service," in this connection, would seem to include all benefits, privileges, and facilities to which the shipper became entitled because of the rate, fare, or charge paid.

Conclusion.

The plaintiff in error, in conclusion, contends that by the Interstate Commerce Act, Congress has assumed jurisdiction of the subject matter in issue wherein it is provided that rates, and regulations affecting rates shall be contained in its schedules filed with the Interstate Commerce Commission; that as the regulations, here in issue, limiting liability to $100 were contained in the schedules of the plaintiff in error and are assumed in these proceedings to have been reasonable, and are not void because they offend public policy or the common or statutory law, and as they are rates, parts of rates, and regulations affecting or determining rates or the value of the service rendered, they have the force of law and thus entered into and became a part of the contract with the defendant in error.

The trial Court erred, therefore, in finding for the defendant in error in a sum in excess of $100.

IV.

Upon the ground of estoppel the limit of liability is $100, and would be if the regulation of the plaintiff in error contained only the following provisions:

> "One hundred and fifty pounds of personal baggage not exceeding $100 in value will be checked free for each passenger on presentation of a full ticket . . .
>
> "For excess value the rate will be one half the current excess baggage rate per one hundred pounds for each one hundred dollars or fraction thereof of increased value declared. The minimum charge for excess value will be 15 cents," —

and omitted the paragraph relating to limitation of liability to $100.

There seems to be no doubt that the two paragraphs quoted under this heading provide only for rates such as this Court has held repeatedly to have the force of law, and to be binding and conclusive upon all parties.

The plaintiff in error contends that the defendant in error, having, in contemplation of law, notice of these rates, and of their variation according to the value of the baggage, and seeing fit to take advantage of a low rate applicable to a valuation of $100, is thereby estopped from now showing that the value of the baggage actually shipped was greater than the value of baggage that might be lawfully shipped for the rate actually paid.

Bigelow, in his work on estoppel, states, on page 459, the rule which governs is as follows:

> "A fact agreed or assumed to be true as the basis of a contract must be taken to be true specifically until the contract itself is lawfully impeached by plaintiff or by defendant, or until such legal proceeding is taken to impeach the truth of the [supposed] fact."

Hoeger v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 63 Wis. 100.

Fourth National Bank of Grand Rapids v. *Olney*, 63 Mich. 58.

Ewart on Estoppel states, on page 137, that:

> "It is broadly laid down that a misrepresentation acted on by the estoppel-asserter is not the less a ground for relief because he had the means of knowledge."

That the defendant in error was bound to take notice of the rates, and of their relation to the value of the baggage, is now a fundamental proposition needing no argument.

> "That the defendant did not see, and did not know that the published rates and schedules made no provision for the services he contracted for, is no defence. For the purpose of the present question he is presumed to have known. The rates were published and accessible and however difficult to understand he must be taken to have contracted for an advantage not open to others."
>
> *Chicago & Alton R.R. Co.* v. *Kirby*, 225 U.S. 155, 166.

> "He [the shipper] must take notice of the rate applicable, and actual want of notice is no excuse. The rate when made out and filed is notice and its effect is not lost although it is not actually posted in the station.
>
> . . . . . .
>
> "The defendant in error must be presumed to have known that he was obtaining a rate based upon a valuation of five dollars per hundred weight, as provided by the published tariff. This valuation was conclusive and no evidence tending to show an under valuation was admissible."
>
> *Kansas City Southern Ry. Co.* v. *Carl*, 227 U.S. 639, 652, 656.

> "When a carrier graduates its rates by value and has filed its tariffs showing two rates applicable to a particular commodity or class of articles,

based upon a difference in valuation, the shipper must take notice, for the valuation automatically determines which of the rates is the lawful rate."

Missouri, Kansas & Texas Ry. Co. v. *Harriman*, 227 U.S. 657, 671.

When a shipper or passenger has actual or presumptive knowledge that rates of charges are based upon valuation, he is held in effect to declare that the value of his goods shipped is in fact that valuation applicable to the rate of freight he assumes to pay.

"A distinction is sought to be drawn between a case where a shipper, on request, states the value of the property and a rate of freight is fixed accordingly and the present case. It is said that while in the former case the shipper may be confined to the value he so fixed, in the event of a loss by negligence, the same rule does not apply when the valuation inserted in the contract is not a valuation named by the shipper. But we see no sound reason for this distinction."

Pennsylvania R.R. Co. v. *Hart*, 112 U.S. 331, 337.

"That no inquiry was made as to the actual value, is not vital to the agreement in this case. The receipt which was accepted showed that the charge made was based upon a valuation of fifty dollars unless a greater value should be therein stated. The knowledge of the shipper that the rate was based upon value is to be presumed from the

terms of the bill of lading and of the published schedules filed with the Commission."

Adams Express Co. v. *Croninger*, 226 U.S. 491, 508.

"The shipper in accepting the receipts reciting that the company 'is not liable beyond the sum of fifty dollars at not exceeding which sum the property is hereby valued, unless a different value is hereabove stated,' did declare and represent that the value did not exceed that sum and did obtain a rate which he is to be presumed to have known was based upon that as the actual value."

Wells, Fargo & Co. v. *Neiman-Marcus Co.*, 227 U.S. 469, 476.

When a shipper or passenger has declared or represented, by the act of taking advantage of a rate which he was bound to know was applicable to a certain valuation, that the value of his property was in fact that valuation, he cannot later show that the baggage had in fact a greater value, as his action in accepting this rate constitutes such a misrepresentation as will estop him from recovering more than the valuation which might rightfully have been shipped at this rate.

"The valuation named was the 'agreed valuation,' the one on which the minds of the parties met, however, it came to be fixed and the rate of freight was based upon that valuation and was fixed upon condition that such was the valuation, and the liability should go to that extent and no further.

. . . . . .

"The compensation for carriage is based on that value. The shipper is *estopped* from saying that the value is greater. The articles have no greater value for the purposes of the contract of transportation between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract fairly entered into and where there is no deceit practiced on the shipper, should be upheld."

Hart v. *Pennsylvania R.R.*, 112 U.S. 331, 338, 341.

"It is undoubtedly true that the principal defence upon which the defendant seemed to have relied in the state court was that by intentional misrepresentation the plaintiff had obtained a rate based upon a valuation of fifty dollars, and that they had thereby secured transportation of the property, for which they sue, at a less rate than that named in the tariff published and filed by the carrier as required by the acts of Congress regulating commerce, and thus obtained an illegal advantage and caused an illegal discrimination forbidden by the acts referred to. But the defence rested upon the misrepresentation as to the real value declared, only in the carrier's receipt, and therefore involving the consequences of the undervaluation by which an unlawful rate has been obtained. The question at last would be, shall the shipper or owner recover nothing because of that misrepresentation, or only the valuation declared to obtain the rate upon which the goods were carried. The

latter would seem to be the more reasonable and just consequences of the estoppel."

Wells, Fargo & Co. v. *Neiman-Marcus*, 227 U.S. 469, 475.

"The rate of freight was based upon the valuation thus fixed, and the liability should not exceed the amount so made the rate basis."

Wells, Fargo & Co. v. *Neiman-Marcus*, *supra*, 477.

"But when a shipper delivers a package for shipment and declares a value either upon request or voluntarily and the carrier makes a rate accordingly, the shipper is *estopped* upon plain principles of justice from recovering, in case of loss or damage, any greater amount. The same principle applies if the value be declared in the form of a contract."

Kansas City Southern Ry. Co. v. *Carl*, 227 U.S. 639, 651.

"That the value of the cattle shipped under this valuation did greatly exceed the valuation therein represented may be true. It only serves to show that the shipper obtained a lower rate than he was lawfully entitled to have by a misrepresentation. It is neither just nor equitable that he shall benefit by the lower rate and then recover for a value which he said did not exist, in order to obtain that rate. Having obtained a rate based upon the de-

cared value, he is concluded, and there is no room for parole evidence to show otherwise."

Missouri, Kansas & Texas Ry. Co. v. *Harriman*, 227 U.S. 657, 670.

The effect of the defendant in error being estopped by her implied misrepresentation of the value of her baggage will not be that of exempting the plaintiff in error from liability for its negligence in contravention of either the principles of the common law or the spirit of the Carmack amendment to the Hepburn Act.

"An estoppel, founded on the agreements of the parties as to the nature or value of the property, is not an exemption from the liability recognized by the common law and affirmed in this statute (Carmack Amendment) as resulting from the ordinary undertaking of a carrier to transport property."

Bernard v. *Adams Express Co.*, 205 Mass. 254, 260.

Alair v. *North. Pac. R.R.*, 53 Minn. 160.

V.

The petition for writ of error was addressed properly to the Massachusetts Superior Court.

The question as to what Court the petition for writ of error should be addressed is referred to at this time for the reason that it has been recently the subject of discussion.

It appears from the docket record that the case was entered and tried in the Superior Court; that exceptions were taken by the defendant, which were passed

upon by the Supreme Judicial Court of Massachusetts, which returned to the Superior Court the rescript, "Exceptions overruled." Thereupon judgment was entered for the plaintiff in the Superior Court. It is thus apparent that the Superior Court was the highest Court in the state in which judgment could be entered (Record, 25, 26).

The statute provides (U.S. St. 1901, sec. 709) that "a final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had . . . may be re-examined and reversed or affirmed in the Supreme Court on a writ of error."

Polleys v. *Black River Improvement Co.*, 113 U.S. 81.
Stanley v. *Schwalby*, 162 U.S. 255, 269.
Jordan v. *Commonwealth of Massachusetts*, 225 U.S. 167.

There have been several cases from Massachusetts in recent years in which the petition was addressed to the Massachusetts Supreme Judicial Court, but they are cases such as a bill for instructions, probate appeals, and the like, in which a final decree was entered in that Court.

Rev. Laws (Mass.), c. 162, sec. 23.
Hammond v. *Whittredge*, 204 U.S. 538.
Andrews v. *Andrews*, 188 U.S. 14.

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Supreme Court of the United States

OCTOBER TERM, 1913

No. 181

BOSTON AND MAINE RAILROAD
Plaintiff in Error
v.
KATHARINE HOOKER

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS

BRIEF ON BEHALF OF THE DEFENDANT IN ERROR

SAMUEL WILLISTON
Of Counsel

BOSTON
Press of Geo. H. Ellis Co.
1913

Supreme Court of the United States

OCTOBER TERM, 1913

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v.

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TABLE OF CASES.

STATEMENT OF FACTS.

The defendant in error, the plaintiff below, a resident of California, was travelling during the summer of 1908, to pay a series of visits to friends and relatives. On the 15th of September of that year, being in Boston, where she had been staying at a hotel for about two weeks, she prepared to leave for a visit at her aunt's house near the shore of Lake Sunapee, New Hampshire. Her baggage, consisting of two trunks and a suit-case, was sent to the station of the plaintiff in error in Boston on that morning. It was checked apparently by a transfer company employed by the hotel to whose clerk the ticket of the defendant in error had been entrusted with directions to have the baggage checked. The checks and the ticket were to be returned to her at the hotel. They were not returned before it was necessary for her to leave the hotel in order to take the train which she had planned to take on the plaintiff in error's road. Nevertheless, she took the train, another ticket being bought for her by her husband or brother, and made the journey to Lake Sunapee. Her baggage went by the same train, and she saw it on her arrival at Lake Sunapee. Not having the checks, she was unable to claim it then, and proceeded on her journey across the lake by steamer. It had been arranged that the checks for her baggage should be sent to her. They were sent, but, owing to the closing for the season of the office at a hotel near her aunt's house, they did not reach her until the evening of September 16. On

the next morning she went to the station for her trunks. She then found that the station with the baggage contained in it had been completely destroyed by fire.

The fire was caused by the falling of a drop lamp by which the station was lighted. The lamp, which contained about six pints of oil, was suspended on a brass ring which was attached to a wire running over the lamp. To the wire was attached a rope which ran through certain pulleys and was tied to a hook on the wall of the station. This action was brought against the Railroad on its contract of bailment in the Superior Court of Massachusetts. The defendant denied liability altogether, and also set up a limitation of its liability to the sum of $100. In support of the latter contention the defendant by plea and proof showed that there had been filed with the Interstate Commerce Commission and posted in accordance with the interstate commerce laws a schedule of rates and regulations which contained a statement that 150 pounds of personal baggage of a value not exceeding $100 would be checked free. Rates of charge for baggage of greater weight were stated, and it was also stated that for greater value than $100 the rate would be "one-half of the current excess baggage rate per 100 pounds for each one hundred dollars or fraction thereof of increased value declared." There then followed the statement: "Baggage liability is limited to personal baggage not to exceed one hundred (100) dollars in value to a passenger presenting a full ticket, and fifty (50) dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at the time of checking the baggage" (Record, p. 12).

When the baggage in question was checked, twenty-three cents were paid on account of the weight thereof

exceeding by 45 pounds the limit of 150 pounds, but no declaration of the value of the baggage was made, nor was any inquiry made by the railroad's servants as to its value. It was not shown that the defendant in error had any knowledge of the so-called regulations of the railroad in regard to baggage the value of which exceeded $100; or that the ticket or baggage checks contained any statement of them.

The case was tried without a jury, and the court found in favor of the defendant in error for the full value of the baggage with interest, amounting altogether to the sum of $2,133.04, and made the following findings of fact:—

"1. That the loss of the plaintiff's baggage was due to defendant's negligence;

2. That the defendant failed to prove that the plaintiff or any one acting for her had actual notice, until after the destruction of her baggage, of the defendant's regulations limiting its liability;

3. That any reasonable person would infer from the outward appearance of the plaintiff's baggage, when tendered to the defendant for transportation, that the value largely exceeded one hundred dollars;

4. That there was no evidence that any more expensive or different mode of transportation was adopted for baggage the value of which had been declared to exceed $100 than for other baggage;

5. That no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value" (Rec. pp. 12, 13).

The plaintiff in error, the defendant below, took certain exceptions which are not now material, since they involve no Federal question, and also excepted to the refusal of the Superior Court to make the following ruling of law:—

"That under the Act of Congress to regulate Interstate Commerce and the amendments thereof and the orders and regulations of the Interstate Commerce Commission and the schedules of rates, fares, and charges of transportation printed, published, and filed by the defendant, the maximum limit of liability in this action is $100" (Record, p. 16).

The exceptions were argued before the Supreme Judicial Court of Massachusetts, and overruled. The opinion of that court is printed in the Record (p. 20). The case is now brought to this Court by writ of error.

BRIEF OF ARGUMENT.

I.

Question Involved in the Case.

The single question involved in the case is whether the filing by the plaintiff in error of schedules containing an assumption of the value of baggage offered for transportation and an assertion of a limitation of liability as hereinbefore quoted (from Record, p. 12) operated to limit the carrier's liability for the negligent loss of the baggage of the defendant in error, though there was no knowledge or assent to such valuation or limitation on her part, and no basis to support such limitation other than the fact of the filing and posting of the schedules.

The finding of the trial court does not indeed in terms state this, but it does in legal effect. The court found:—

> **"That the defendant failed to prove that the plaintiff, or any one acting for her had actual notice, until after the destruction of her baggage, of the defendant's regulations limiting liability."**
>
> (Record, p. 12.)

This finding, together with the failure of the Record to show any evidence of even an attempt to give notice to the defendant in error, orally or by checks or tickets and the finding,

> **"that the defendant did not request any declaration of value from the plaintiff or any person purchasing the ticket for her and presenting the baggage for checking,"**

(Record, p. 16), indicate that the single question is whether the filing and posting of the schedules has the effect

claimed for it by the plaintiff in error. The baggage of the defendant in error was bailed to the plaintiff in error and negligently lost by it. The burden of proof is upon the carrier to show some reason excusing it from full liability.

> **"The carrier and its agents, having received possession of the goods were charged with the duty of delivering them or explaining why that had not been done."**
>
> *Galveston, etc., Ry. Co.* v. *Wallace*, 223 U. S. 481, 492.

The only attempt to sustain the burden, aside from matters of fact as to which the issue has been found against the carrier, is by means of the schedules.

II.

There is No Question Involved of the Limits of Federal and State Laws.

At the outset it should be observed that there is involved no dispute as to the border line between Federal and State authority. The Massachusetts court sought to invoke no peculiar Massachusetts rule of law. It is admitted in the opinion of the State court, and it is admitted now by the counsel of the defendant in error, that the Federal law as laid down in the Interstate Commerce Acts as construed by this Court is supreme. The only question then relates to the construction of those Acts. Do they abrogate the rule of the common law in this case?

The Massachusetts court admits that the rule of the common law heretofore enforced in Federal and State

court alike can be changed so far as concerns interstate commerce by Act of Congress. The opinion of Mr. Justice (now Chief Justice) Rugg reads:—

> **"It may be conceded that the subject matter of passenger's baggage in interstate travel is within the control of Congress and any enactment by it would bind the parties."**
>
> (Record, p. 22.)

The sole question, then, is one of construction of the Federal statutes, and the contention of the defendant in error is that these Acts leave unchanged the law previously existing and shown by the decisions of this Court, of the courts of Massachusetts, and of many other States, that a limitation of a carrier's liability requires the shipper's assent to make it binding. As a preliminary to a consideration of the Interstate Commerce Acts, it is desirable to state with a little more detail the rule of the common law.

III.

By the Rule of the Common Law a Limitation of Liability was Invalid unless a Special Contract was made by which the Shipper agreed Thereto, or unless the Shipper was estopped by Misrepresentation.

The proposition stated in the above heading has unquestionably represented the law laid down by the Supreme Courts of the United States, of Massachusetts, and of the great majority of other States. No different rule in regard to baggage is contended for in this brief from that applicable to freight, and it is not to be expected

that counsel for the plaintiff in error will make any such contention.

That the limitation was invalid unless assented to had been decided by the Massachusetts court as to baggage prior to the decision of the case at bar in

Brown v. *Eastern R.R.*, 11 Cush. 97;
Malone v. *Boston & Worcester R.R.*, 12 Gray, 388.

See also

Graves v. *Adams Express Co.*, 176 Mass. 280.
John Hood Co. v. *American Pneumatic Service Co.*, 191 Mass. 27,

where the goods transported were not baggage. The question was elaborately considered by this Court in

The Majestic, 166 U. S. 375 (decided in 1897),

in the light of its own previous decisions, the decisions of Massachusetts and of England, and the court summed up its conclusion in regard to the matter (at p. 386) in a quotation from Lord O'Hagan in *Henderson* v. *Stevenson*, L. R. 2 H. L. (Sc.), 470, 481:—

> **"When a company desires to impose special and most stringent terms upon its customers, in exoneration of its own liability, there is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted."**

In *Cau* v. *Texas & Pacific Railway Co.*, 194 U. S. 427, 431 (decided in 1904), this Court said, speaking broadly of goods transported by a carrier,—

> **"There can be no limitation of liability without the assent of the shipper,"** citing

New Jersey Steam Navigation Co. v. *Merchants' Bank*, 6 How. 344.

Not only in these comparatively recent decisions were these rulings made. They had long been stated as the law. In

York Co. v. *Central Railroad*, 3 Wall. 107,

it was held (pp. 111, 112) that a carrier might limit his liability by "special contract" or "special agreement."

So in

Railroad Company v. *Lockwood*, 17 Wall. 357, 361,

a "special contract" is stated as the method of limiting liability, and (at p. 383) it is said,—

> **"The law in the absence of special contract fixes the degree of care and diligence due from the railroad company to persons carried on its trains."**

Similar use of the words "contract" or "special contract" is made in

Hart v. *Pennsylvania Railroad*, 112 U. S. 331, 343.

Liverpool Steam Co. v. *Phenix Ins. Co.*, 129 U. S. 397, 441, 442.

In *Saunders* v. *Southern Ry.*, 128 Fed. Rep. 15 (C. C. A. Sixth Circuit), in 1904, Mr. Justice Lurton, now of this Court, delivering the opinion of the Circuit Court of Appeals, said:—

> **"The general liability for the baggage of a passenger is that of an insurer. But this common-law obligation may be limited by an agreement, fair and reasonable, between the carrier and passenger against all loss and damage not resulting from the negligence of the carrier and his servants. 3 Thompson on Neg-**

ligence, Sec. 3455. The rule in respect to baggage is not different from that in relation to freight. When a carrier desires to limit its common law responsibility, there is nothing unreasonable in requiring that the extent of the exoneration shall be plainly declared, and brought to the attention of its customer in such a way as to afford opportunity for acceptance or rejection."

In view of these Federal decisions it is not necessary to set forth the numerous decisions of other courts as to both freight and baggage. It is desirable, however, to observe that such decisions have continued to be made in recent years in precisely the same manner as before the passage of the Interstate Commerce Acts.

See the Federal cases, *supra*, also

Williams v. *Central R.R. Co. of New Jersey*, 183 N. Y. 518, affirming without opinion the decision as reported in 93 N. Y. App. Div. 582.

Martin v. *Central R.R. Co. of New Jersey*, 121 N. Y. App. Div. 552.

Homer v. *Oregon Short Line R. Co.* (Utah), 128 Pac. 522.

Black v. *Atlantic Coast Line R.R. Co.*, 82 S. C. 478.

Elliott on Railroads (4th ed.), Sec. 1510.

Hutchinson on Carriers (3d ed.), Sec. 401.

No jurisdiction, it is believed, has given any less protection to the shipper of goods, whether of freight or baggage, than that sanctioned by the decisions just cited; but some States have given more. In a few States, even though a limitation of liability had been agreed to,

it has been held, nevertheless, either wholly invalid or invalid so far as concerns the carrier's liability for negligence.

See Hutchinson, Carriers (3d ed.), Sec. 405.
Pennsylvania R.R. v. *Hughes*, 191 U. S. 477.
Adams Express Co. v. *Green*, 112 Va. 527.

And in a few States, of those which form the great majority and have upheld to its full extent a contract of valuation or limiting liability, it has been held that no merely formal assent inferred from accepting a bill of lading or a receipt without actual knowledge of its contents, and without the shipper's attention being called by the carrier to the limitation, is valid, though an agreement made with full knowledge of the situation would bind the shipper.

See Hutchinson, Carriers (3d ed.), Sec. 410.
Plaff v. *Pacific Express Co.*, 251 Ill. 243.
Hill v. *Adams Express Co.*, 82 N. J. L. 373.
Wichern v. *United States Express Co.*, 83 N. J. L. 241.

It was a subject of grave consideration in this Court whether even a special agreement would have the effect of limiting the carrier's liability for negligence, for, as this Court has said, in

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639, 650,

"An agreement to release such a carrier for part of a loss due to negligence is no more valid than one whereby there is complete exemption. Neither is such a contract any more valid because it rests upon a consideration than if it was without consideration."

It was held, however, in

Hart v. *Pennsylvania Railroad*, 112 U. S. 331,

that, though a stipulation to limit liability for the consequences of negligence might be invalid as such, an agreement as to the valuation of property was valid, and that the carrier's liability would be restricted, even for losses due to negligence, to that valuation not by virtue of a contract to limit the liability, but by virtue of an estoppel. And this principle has been insisted upon in the recent decisions of this Court.

> **"The ground upon which the validity of a limitation upon a recovery for loss or damage due to negligence depends is that of estoppel."**
>
> *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, 476.
>
> See also *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 651.

For the purposes of estoppel it is obviously immaterial whether the shipper makes a contract as to the value of his property or merely makes a representation; but the assent of the shipper is as necessary in one case as the other.

The refinements of the law in different jurisdictions are only important in this case to indicate the scope of the recent decision of *Adams Express Co.* v. *Croninger*, 226 U. S. 491, and the cases which follow it. These cases in effect hold that the Federal Government has declared its purpose to exercise supervision over all interstate contracts of carriage, and that therefore this Court will pass upon their validity. In effect, therefore, this Court will decide both whether a contract limiting liability is valid in law and whether such a contract was made in fact. These decisions must necessarily affect the law hereafter laid down in a number of States. Those States which have had a different rule from that of this

Court, regarding either what is necessary to prove the existence of a contract to limit liability or the extent to which such a limitation is valid, must modify their rules so far as interstate shipments are concerned; but the law of Massachusetts will remain unchanged, for that law is precisely the same as that laid down in the Croninger case, both with reference to the validity of agreements to limit liability and with reference to what constitutes such an agreement. In Massachusetts it has long been the law that the acceptance of a document binds one who receives it, though he may not choose to read it.

Grace v. *Adams*, 100 Mass. 505.

Grinnell v. *Western Union Tel. Co.*, 113 Mass. 299.

Hoadley v. *Northern Transportation Co.*, 115 Mass. 304.

Clement v. *Western Union Tel. Co.*, 137 Mass. 463.

Graves v. *Adams Express Co.*, 176 Mass. 280.

And such had indeed been the law laid down by this Court prior to the decision of the Croninger case.

Cau v. *Texas & Pacific Ry. Co.*, 194 U. S. 427, 431.

But it should be observed that it has also been the law both of this Court and of the Massachusetts court that a public notice of an asserted limitation by the carrier, even though the shipper was aware of it (which was not the fact in the case at bar), does not have the effect of an agreement or representation. Some actual assent is necessary. The carrier

> **"is in the exercise of a sort of public office, and has public duties to perform, from which he should not**

be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may, or may not be assented to."

New Jersey Steam Navigation Co. v. *Merchants' Bank*, 6 Howard, 344, 382.

"If any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights, and the duties of the carrier, as it is that he assented to their qualification."

New Jersey Steam Navigation Co. v. *Merchants' Bank*, 6 Howard, 344, 383.

Both the foregoing extracts were quoted with approval in

Railroad Co. v. *Manufacturing Co.*, 16 Wallace, 318, 328, 329.

In that case the court also said at page 329:—

"It is not only against the policy of the law, but a serious injury to commerce to allow the carrier to say that the shipper of merchandise assents to the terms proposed in a notice, whether it be general to the public or special to a particular person, merely because he does not expressly dissent from them."

So in Massachusetts the same principle has been laid down:—

"Such being the legal relation which subsists between a common carrier and his employer, it certainly would be inconsistent with it to hold that a carrier, by a mere notice brought home to the owner of goods intrusted to his care that he did not intend to assume all the liabilities of his calling, could escape or materially change the responsibility which the

law annexes to the contract of the parties. It would in effect put it in the power of the carrier to abrogate the rules of law by which the exercise of his employment is regulated and governed. Certainly such a notice, even if shown to have been within the knowledge of the owner of goods, would, in the absence of evidence of his direct assent to its terms, afford no sufficient ground for the inference that he had voluntarily agreed without any consideration to relinquish and give up the valuable right of having his goods carried at the risk of the carrier. On the contrary, it would be quite as reasonable to infer under such circumstances that the carrier did not intend to rely upon a notice upon which he could not legally insist, as that the owner of goods meant to surrender a right to which he was entitled by law. In such case, mere silence cannot be said to amount to acquiescence."

Judson v. *Western Railroad Corporation*, 6 Allen, 486, 491.

"It is no longer open to controversy in this state that a common carrier may limit his responsibility for property intrusted to him by a notice containing reasonable and suitable restrictions, if brought home to the owner of goods delivered for transportation and assented to clearly and unequivocally by him. It is also settled that assent is not necessarily to be inferred from the mere fact that knowledge of such notice on the part of the owner or consignor of goods is shown. The evidence must go further and be sufficient to show that the terms on which the carrier proposed to carry the goods were adopted as the contract between the parties according to which the service of the carrier was to be rendered."

Buckland v. *Adams Express Co.*, 97 Mass. 124, 131.

And this is the generally accepted law of the United States.

1 Hutchinson on Carriers (3d ed.), Sec. 406.

It is suggested in the opinion of the Massachusetts Court in the present case that the English rule is slightly more favorable to the carrier (Record, p. 22); but it is hard to find any warrant for this statement in the decisions cited.

Henderson v. *Stevenson*, L. R. 2 H. L. (Sc.) 470.
Richardson v. *Rowntree*, (1894) A. C. 217.

In both these cases it was held that the acceptance of a ticket containing a statement of an asserted limitation of liability did not bind the passenger to whose attention the limitation was not called, where the attention of the passenger was not naturally attracted to the statement, because in one case it was printed on the back of the ticket and because in the other case the ticket was folded. In the former case Lord Chelmsford said (at p. 477),—

> **"I think that such an exclusion of liability for negligence cannot be established without very clear evidence of the notice having been brought to the knowledge of the passenger and of his having expressly assented to it."**

In *Parker* v. *South Eastern Ry. Co.*, 2 C. P. D. 416, the court did indeed hold that the question should have been left to the jury whether the carrier did that which was reasonably sufficient to give the passenger notice of a condition on a ticket which he had accepted, but it is clear that the reasonableness of the carrier's action only was regarded as bearing only upon the question whether the passenger was chargeable with assenting to what was

printed on a ticket which was delivered to the passenger. Under the law as laid down by this Court and by the Massachusetts court there seems little doubt that the passenger would have been chargeable with notice of the terms of the ticket as matter of law; and there seems no reason to suppose that any reasonable action by a carrier, not involving acceptance by its customer of a document containing the proposed contract, will bind the latter under the law of England.

It is too clear for argument, then, that under the common law rules the plaintiff in error in the present case was properly held liable for the full value of the baggage. The defendant in error contends that there is nothing in the Interstate Commerce Acts which leads to a different result, either because the attempted limitation became by force of the statute binding directly or because the schedules gave such notice to the defendant in error as to be the equivalent of a representation by her which subjected her to an estoppel.

IV.

A Limitation of Liability is not a Rate.

Section 6 of the Interstate Commerce Law, as amended in June 29, 1906, provides for the printing of schedules showing "all the rates, fares and charges for transportation," and further enacts that no carrier shall charge or collect a different compensation than the rates specified in the tariff, nor refund any part of them. The section is wholly confined to rates, and the only effect of the section is to make the rates established by the tariff binding upon the public. A limitation of liability is not a rate, and cannot by any reasonable construction

be so considered. A rate is the return paid by the shipper, or for which he is bound, to the carrier for rendering the service. An agreement for a special valuation or a limitation of liability is not a return given to the carrier for its services. It is a limitation or diminution of the service, agreed to generally in order to secure a lower rate. The carrier's reward "ought to be proportionable to the risque."

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639, 650.

The "reward" is the rate, the "risque" is part of the service. Such a limitation of service may be made, or attempted to be made, as stated in

Railroad Co. v. *Fraloff*, 100 U. S. 24, 27,

"a condition precedent to any contract for the transportation of baggage," at a specified rate; and, whether or not the method attempted is effectual, it is submitted that this is what the carrier is here seeking to do,—to make an admission or agreement as to value a condition precedent to the contract of carriage. If the condition is successfully imposed, the result is a limitation of liability which is a diminution of the carrier's service, not part of the rate, though the rate of course varies with the service for which it is given.

It is indeed said in a recent case,—

> **"To the extent that such limitations of liability are not forbidden by law, they become, when filed, a part of the rate."**
>
> *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 654.

It is submitted that, taken with their context and in connection with the facts of the case before the Court

these words do not mean that simply filing a schedule with an asserted limitation of liability operates to limit the carrier's liability without the shipper's assent, but merely that the rate filed for carriage under limited liability cannot be given for carriage with unlimited liability. The service specified in the tariff as the basis for a rate is necessarily connected with the rate. As said in *Hart* v. *Pennsylvania Railroad Co.*, 112 U. S. 331, 337,—

> **"The rate of freight is indissolubly bound up with the valuation."**

This is, of course, the law. Consequently, it may well be that the carriage of baggage free at unlimited liability is forbidden by law. The rate appropriate for a higher degree of liability must be charged.

A number of expressions in the latest decisions of this Court show that the sentence quoted above from the Carl case is not to be understood as meaning that a limitation of liability or the valuation on which such a limitation is based is literally part of the rate itself. Thus it has been said,—

> **"The rate was based upon the value."**
>
> *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509.

So in a passage from

> *Bernard* v. *Adams Express Co.*, 205 Mass. 254, 259,

quoted in the same case (at p. 511):—

> **"It is a contract as to what the property is in reference to its value."**

So in

> *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 649,

the court refers to

> **"a valuation agreed upon for the purpose of determining which of two alternative lawful rates shall apply to a particular shipment."**

And again, on page 650, in the same case,—

> **"a declared value by the shipper for the purpose of determining the applicable rate."**

These statements are inconsistent with the idea that the limitation of liability or the asserted value is part of the rate itself. The basis of the rate cannot itself be the rate. The truth is rather, as stated on page 653 of the Carl case,—

> **"that the valuation and the rate are dependent each upon the other,"**

just as it is always true that the service which the carrier is to render and the rate are dependent each upon the other.

So the statements made in both

> *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, 475, and
> *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 651,

that the ground upon which the validity of a limitation upon a recovery for loss due to negligence rests is that of estoppel, become strikingly inappropriate, if it is true that a limitation of liability is literally part of the rate. On that assumption the only ground upon which the limitation could stand would be that it was filed as part of the rate. Estoppel can in no way enlarge or diminish or in any way affect a filed rate.

That the sentence in question in the Carl case is not to be understood as stating that the mere filing of an asserted

valuation or limitation of liability is operative without more to bind a shipper is also evident from the language on page 650 in the same case. The court there says,—

> **"If the shipper desires the lower rate, he should disclose the valuation, for in the absence of knowledge the carrier has a right to assume that the higher of the rates based upon value applies."**

It is the lower rate which will always be applicable to the transportation under limited liability, and, if the posting of the limitation made it effective on the mere receipt of the goods, the lower rate would be that applicable. But the court says not that the lower rate and the limitation of liability bind the shipper, but that the higher rate is the rate applicable.

So on page 651 the court says,—

> **"But when a shipper delivers a package for shipment *and declares a value, either upon request or voluntarily,* and the carrier makes a rate accordingly, the shipper is estopped upon plain principles of justice from recovering, in case of loss or damage, any greater amount."**

If the contention of the plaintiff in error is sound, the sentence last quoted states as a requirement unnecessarily that the shipper shall declare a value. The assertion of the plaintiff in error is that the carrier may declare a value for the shipper, and by filing it, with its rates, bind the shipper.

It is not therefore to be supposed that this Court meant by the sentence on page 654 of the Carl case that limitations become part of the rate, to discredit the numerous decisions and statements made by this Court that a limitation of liability can only be made by agreement or misrepresentation of value by the shipper.

The amendments to the Interstate Commerce Act in 1906 did not change the law either as to what a rate is or what the effect is of a rate duly filed. Whatever is now binding as a rate upon a shipper was binding before 1906. The statements in

The Majestic, 166 U. S. 375, quoted *supra*, p. 8,

in

Cau v. *Texas & Pacific Ry. Co.*, 194 U. S. 427, 431, *supra*, p. 8,

in

Saunders v. *Southern Ry.*, 128 Fed. Rep. 15, quoted *supra*, p. 9,

all made shortly before 1906, would all have been inaccurate as general statements in asserting that the assent of the shipper was necessary for the validity of a limitation of liability. Moreover, the decisions in

Chicago, Milwaukee & St. Paul Ry. Co. v. *Solan*, 169 U. S. 133,

and in

Pennsylvania Railroad v. *Hughes*, 191 U. S. 477,

which admitted the efficacy of State laws forbidding limitations of liability, would have been wholly wrong. For, if the limitation of liability is literally part of the rate, not only must it be assumed that the schedules of the railroad showed the rate and the asserted limitation of liability, but the special contracts of limitation proved in the cases would have been clearly within exclusive Federal control prior to the Amendments of 1906. It has been decided that the Carmack Amendment gives full control to the Federal Government of all contracts for interstate carriage, but it does not change the definition

of what is a rate, and, if a limitation of liability is now part of a rate, it was part of a rate when these cases were decided.

The qualification in the sentence quoted from the Carl case *supra*, "To the extent that such limitations of liability are not forbidden by law," must also be observed. A limitation of liability in any form except by contract or a representation by the shipper has never been permitted by the law. The attempt to escape from this rule of the common law is as ineffectual as the attempt to escape the statutory liability cast upon an initial carrier by the Carmack Amendment, which was held futile in

Atlantic Coast Line R.R. Co. v. *Riverside Mills*, 219 U. S. 186.

Galveston, etc., Ry. Co. v. *Wallace*, 223 U. S. 481.

Norfolk & Western Ry. Co. v. *Dixie Tobacco Co.*, 228 U. S. 593.

V.

A Limitation of Liability is not within the Meaning of the Words "Rule, Regulation, or Practice."

Section 15 of the Statute as amended in 1906 provides for complaint of unreasonable rates, or regulations or practices affecting rates, and it was argued on behalf of the carrier in the State court that the attempted limitation was a "regulation" within this section.

> **"A regulation is a rule or order prescribed by a superior for the management of some business or for**

> **the government of a company or society. *Curry* v. *Marvin*, 2 Fla. 411, 415, (citing Webst. Dict.). *In re Leasing of State Lands*, 32 Pac. 986, 988, 18 Colo. 359."**

This meaning of the word "regulation" is well established and in common use in the law of carriers. A great variety of rules or orders are enforced by railroads without regard to the consent of the public. Such consent is unnecessary if the rules or orders pertaining to the company's business are reasonable for its government. A number of such rules and regulations are collected in 1 Elliott on Railroads, Sec. 199 *et seq.*

But a limitation of liability or a valuation is not a regulation, it is not a practice. As the court said in *Martin* v. *Central R.R. Co. of New Jersey*, 121 N. Y. App. Div. 552, 553,—

> **"It is only by a contract that the defendant could limit its liability."**

That this was absolutely settled in this Court and indeed throughout the United States at common law has already been seen. Nor does Section 15 of the Interstate Commerce Law lay down a different rule. There is nothing in that section which provides that a carrier may effectively promulgate as a regulation something which the common law permitted to be effective only by means of an agreement.

Doubtless it would be a regulation or practice of the carrier if it required shippers to enter into a contract of any sort with it. The form of the bills of lading which a carrier issues to a shipper is prescribed by a regulation of the carrier, and it is a practice of the carrier to issue such a bill of lading. The reasonableness of that regulation or that practice may be the subject of inquiry before the Interstate Commerce Commission, and presumably could

be inquired about only before that tribunal. But this does not make the regulation or practice of the Company in regard to the issue of bills of lading bind the shipper contractually to the terms of a bill of lading not delivered to him, even though the regulation or practice is stated, and must be stated, in the published tariff. It is the delivery of the bill of lading to the shipper and his acceptance of it which creates the contract. Similarly, the carrier may, by regulation or practice, require travellers to enter into contracts regarding their baggage, and, if it does so, the regulations or practices by which it so requires travellers to contract will be the subject of inquiry before the Interstate Commerce Commission. Yet the contract is made not by publishing the regulation or practice, but, as other contracts are made, by the expression of mutual assent between the parties.

If the carrier made a practice of informing travellers that their baggage would be carried free only in case they assented to a limitation of liability to $100 and of refusing to transport baggage on other terms, whether that practice of the carrier was reasonable or unreasonable, would be the subject of inquiry by the Interstate Commerce Commission under Section 15 of the Statute. Therefore it is that carriers are required to file as part of their schedules the regulations and practices under which they propose to contract with the public just as they are obliged to file the form of bills of lading and live-stock contracts which they propose to use. It is true that the court said in the case of *Railroad Company* v. *Fraloff*, 100 U. S. 24, 27,—

> **"It is undoubtedly competent for carriers of passengers, by specific *regulations*, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any**

> **statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except in additional compensation, proportioned to the risk."**

This statement, taken as a whole, indicates that the court understood and agreed to the rule generally in force, and repeatedly upheld in this Court, that mutual assent was essential to the validity of the limitation of liability. The use of the word "regulation" is not in itself perhaps a happy one, but the context sufficiently shows that this Court in the case in question, as more plainly in the later cases of *The Majestic*, 166 U. S. 375, and *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 427, as well as in the earlier cases, cited *supra*, p. 9, regarded agreement (or misrepresentation) as necessary for the limitation of liability.

A "regulation" which needs the assent of the person who is to be regulated as a condition of its efficacy is not properly called a regulation. It is not even an offer, until brought to the knowledge of the person to whom it is addressed.

Both in *Armour Packing Co.* v. *United States*, 209 U. S. 56, 81, and in *Louisville & Nashville Ry.* v. *Mottley*, 219 U. S. 467, 479, this Court has said,—

> ***"There is no provision for the filing of contracts with shippers and no method of making them public defined in the statute."***

This sentence indicates not only that a special contract with a single shipper cannot be validated in any way by publication, but also that the carrier cannot by publication impose a contract upon shippers.

Moreover, it is to be observed that Section 15 of the Statute does not provide that the regulations of a carrier

bind shippers, as Section 6 provides in regard to rates. As, however, any complaint of regulations can only be made to the Interstate Commerce Commission, a regulation which the carrier can itself enforce by its own action, and does so enforce, is, except as qualified by the right of complaint to the Commission, binding upon the public. But, except as the carrier actually enforces its own regulations, they impose no civil liability on the shipper. For any discrimination due to such a failure the only civil remedy is against the carrier. The shipper, if he pays the full rate for the service received, is under no liability of any kind. If he does not pay the appropriate rate, he is, by the Statute, made liable for that and for nothing else, though, if the result was discriminatory, he might be guilty of a misdemeanor.

VI.

The Fact that a Proposed Limitation of a Carrier's Liability must be filed as Part of the Tariff does not involve the Conclusion that All Shippers thereupon become bound by the Limitation.

It is doubtless true that the carrier is bound to file with the Commission, as part of its tariff, the proposed limitation of value. Section 6 of the Interstate Commerce Act provides that every common carrier shall file schedules not only showing rates, but "all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper, or consignee."

This sentence makes it incumbent on the carrier not simply to state in its schedules the rate, but the service for which the rate is to be charged. If, therefore, the rate is to be charged for entering into a contract of a specific kind, the carrier must file as part of its tariff the terms of that contract. Accordingly, the carrier is bound not simply to file schedules of excess baggage rates and general baggage regulations, but it is required to file copies of the bills of lading it proposes to use, copies of live-stock contracts, and of any other contracts which it is prepared to enter into as part of the service which it offers to the public.

It is impossible to state rates without stating the services to which the rates apply. This must always have been true since the Act was first passed. In 1894 in

Wehmann v. *Minneapolis Ry. Co.*, 58 Minn. 22, 29,

the court notes that, since no limitation of liability was mentioned in the tariff, the published rates must be regarded as applying to full liability. In 1898 the case of

Mannheim Ins. Co. v. *Erie & Western Transportation Co.*, 72 Minn. 357,

shows that the form of bill of lading to which a rate was applicable was filed as part of the tariff.

But, though the form of contract must thus be filed, the statute does not give effect to the contract until it is agreed to.

VII.

The Defendant in Error was not Chargeable with Constructive Assent to the Asserted Limitation of Liability.

The defendant in error was not by virtue of the filing of the schedules charged with notice of their contents in such a sense as to supply the mutual assent necessary for the formation of a contract. Such expressions as that "everybody is presumed to know the law" and "contracts with reference to the law" are common as are statements that a "shipper is chargeable with notice of the published rates," but these statements are merely a common legal method of saying that in the cases under consideration notice is unnecessary.

A law or a statute is binding, whether persons subject to the law are aware of it or not. A rate duly filed is unquestionably equally binding; but it is not perhaps a fortunate mode of expression, even in regard to the rate itself, to say that shippers are conclusively presumed to know it. It is submitted that the exact expression is that in *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 652, "want of knowledge is no excuse," or that in *Pennsylvania Railroad Co.* v. *International Coal Co.*, 230 U. S. 184, 197,

> **"The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute, binding as such upon Railroad and shipper alike."**

That the law recognizes the fact that a shipper may or may not know the rate, is obvious from the criminal

sections of the Act. The words "wilfully," "willingly," and "knowingly," recur in the criminal provisions applicable to shippers. It can hardly be claimed that a shipper who ignorantly violated a prohibition of the Act which was qualified by one of these words is guilty of a misdemeanor,

Potter v. *United States*, 155 U. S. 438;

yet, if it were true that he was conclusively presumed to know the contents of schedules duly filed, he would be violating the Act wilfully, willingly, and knowingly.

Even in prosecutions under the Elkins Act, which contains no express qualifying word such as "wilfully" or "knowingly," the Circuit Court of Appeals for the Seventh Circuit has held that a shipper who ignorantly ships goods at a preferential rate is not criminally liable,

Standard Oil Co. of Indiana v. *United States*, 164 Fed. Rep. 376,

and this decision has been accepted by the Circuit Court of Appeals in the Second Circuit.

Standard Oil Co. of New York v. *United States*, 179 Fed. Rep. 614.

Of this question, this Court later said in

Armour Packing Co. v. *United States*, 209 U. S. 56, 85,

> **"Whether shippers who pay a rate under the honest belief that it is the lawfully established rate, when in fact it is not, are liable under the statute because of the duty resting on them to inform themselves as to the existence of the elements essential to establish a rate as required by law, is a question not decided because not arising on this record."**

Whatever doubt there may be as to this matter depends on whether knowledge of the true rate is a requisite of guilt on the shipper's part under the Elkins Act. If knowledge is necessary, it is submitted that a fictitious presumed knowledge will not do. Nor can such presumed knowledge be the foundation of mutual assent to contract in any case where it is necessary to establish that there is a real contract,—not merely to show that the statute imposes an obligation irrespective of mutual assent. Nor can such presumed knowledge turn an offer of goods for transportation into a representation of their value. The Interstate Commerce Acts do not provide for the total abolition of the law of contracts as applied to shipper and carrier. Some contracts are forbidden because discriminatory or because they are not filed, and a statutory obligation is imposed on shippers for the payment of proper rates, but apart from this no contracts or obligations can be created except as at common law.

But, even if the shipper's obligation were to be expressed in terms of conclusive presumptions of knowledge, it is only rates and perhaps regulations that he can be conclusively presumed to know, not asserted limitations of liability or other matters which are intended as the consideration for the rate, or as conditions precedent to granting it. The knowledge to be presumed, if any knowledge is to be presumed, is that the passenger is bound to pay the specified rate for the carrier's service in carrying at full liability.

Moreover, notice of an asserted limitation of liability would not be enough to bind a shipper. He must assent to the limitation. When he accepts without objection a ticket, receipt, or bill of lading or other document purporting to express a contract between the parties, he must be deemed to give assent to the stipulations

therein; but, when he merely tenders goods for shipment, no assent even to known assertions of the limits of the carrier's duties can be implied,

See authorities, *supra*, pp. 13–15,

much less to unknown assertions.

VIII.

There is no Estoppel barring the Defendant in Error from showing the Value of her Baggage.

It is doubtless true that, if a passenger misrepresents the value of his baggage, the carrier, who relies on the representation of the passenger, is bound to pay only the supposed value of the baggage.

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639, 651.

In order to make out an estoppel, it is necessary to show both a misrepresentation and a reliance on it. In this case there was neither misrepresentation nor reliance. The tender of the baggage for the reasons already stated in this brief was not a misrepresentation that the baggage was worth no more than $100, nor did the carrier rely on any such representation, if it could be supposed to have been made. The finding of the trial court that any reasonable person would have inferred from the outward appearance of the baggage that its value largely exceeded $100 proves conclusively that the carrier was not deceived. The books will be searched in vain to find any analogy for an estoppel made out by an assumption that a representation was made because of presumed knowledge of the provisions of a statute, when the party

claiming the estoppel had no reason to believe that the person with whom he was dealing had knowledge of the statute, and when he was himself aware both of its provisions and of the facts in regard to which he claims the estoppel. Instead of the passenger deceiving the carrier, the carrier is seeking to deceive the passenger, for the carrier under the circumstances of this case has full knowledge and the passenger has none.

In *The Matter of Released Rates*, 13 Interstate Commerce Reports, 550, 554, the court said:—

> **"An estoppel cannot arise unless the party invoking it has been the victim of misrepresentation and has himself acted in good faith. Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount of its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not; it has not acted in good faith, neither has it been the victim of misrepresentation."**

In the present case there is one less element of an estoppel than in the case supposed in the foregoing extract; that is, in this case the carrier has not given the shipper a bill of lading or other form of receipt containing an arbitrary valuation. It has simply filed in its schedules that arbitrary value as the assumption it proposes to make in regard to baggage received by it.

IX.

Judicial Decisions do not support the Construction of the Statute contended for by the Plaintiff in Error.

There is nothing in the decisions under the Interstate Commerce Acts which is in conflict with the construction of the Statute for which the defendant in error contends. It is of course well settled that a shipper has no redress because a rate is unreasonable, except by the direct proceedings allowed by the Act,

Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426,

Robinson v. *Baltimore & Ohio R. Co.*, 222 U. S. 506,

Pennsylvania Railroad Co. v. *International Coal Mining Co.*, 230 U. S. 184,

Mitchell Coal Co. v. *Pennsylvania Railroad Co.*, 230 U. S. 247,

and the unreasonableness of a rule, regulation, or practice of a carrier must be objected to in the same way.

Baltimore & Ohio Railroad v. *United States*, 215 U. S. 481.

Morrisdale Coal Co. v. *Pennsylvania Railroad Co.*, 230 U. S. 304.

But the defendant in error does not assert that the rate specified in the tariff for baggage exceeding $100 in value is unreasonable. Probably the rate is reasonable enough. At any rate, the defendant in error does not complain of it. Nor, if the carrier has a rule, regulation, or practice, requiring those who offer baggage either to

agree that the limit of value of the baggage so tendered is $100 or to pay charges specified in the tariff, does the defendant in error complain that such rule, regulation, or practice, is unreasonable. But an assertion contained in the tariff, even if made in terms (as it was not), that the passenger does make such an agreement, still less an assertion that liability is limited, unless a contract is made, is neither a rate, a rule, a regulation, or a practice.

There is nothing in the decisions of this Court at variance with these principles, nor does the case of

Adams Express Co. v. *Croninger*, 226 U. S. 491,

and the cases which followed it,

Chicago, Burlington & Quincy Ry. Co. v. *Miller*, 226 U. S. 513,

Chicago, St. Paul, etc., Ry. Co. v. *Latta*, 226 U. S. 519,

Wells, Fargo & Co. v. *Neiman-Marcus Co.*, 227 U. S. 469,

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639,

Missouri, K. & T. Ry. Co. v. *Harriman*, 227 U. S. 657,

limit the principle that "there is no provision for the filing of contracts with shippers, and no method of making them public defined in the Statute." On the exact facts of *Adams Express Co.* v. *Croninger* the Massachusetts court, shortly before it decided this case in favor of the shipper, had decided in favor of the carrier,

Bernard v. *Adams Express Co.*, 205 Mass. 254,

and the Court of Appeals of New York had reached the same result.

Greenwald v. *Barrett*, 199 N. Y. 170.

Yet neither the New York court nor the Massachusetts court felt that such decisions in the least interfered with the general rule that a passenger, or, indeed, any shipper of goods, could recover their full value if lost by negligence of the carrier, in the absence of a special contract of valuation or of limitation of liability. In the cases where the liability of the carrier has been held to be limited, there was, in fact, a special contract to that effect or an agreed valuation. In *Adams Express Co.* v. *Croninger* the shipper had accepted a receipt stating a valuation and limitation of liability as one of the terms of the contract contained in the receipt. This also was true in

Wells, Fargo & Co. v. *Neiman-Marcus Co.*, 227 U. S. 469.

In other recent cases,

Chicago, Burlington & Quincy Ry. Co. v. *Miller*, 226 U. S. 513,

Missouri, K. & T. Ry. Co. v. *Harriman*, 227 U. S. 657,

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639,

there was unquestionably assent in fact to the limitation of value.

One sentence in the case of *Adams Express Co.* v. *Croninger* will doubtless be pressed upon the attention of the court:—

> **"The knowledge of the shipper that the rate was based upon the value is to be presumed from the terms of the bill of lading and of the published schedules filed with the Commission."**

It is not a fair inference from this sentence, however, that merely filing schedules with the Commission of itself

charges the shipper with knowledge of the limitation of liability, still less that the shipper assented to the limitation.

The sentence is immediately followed by another:—

> **"That presumption is strengthened by the fact that across the top of this bill of lading there was this statement in bold type: 'This Company's charge is based upon the value of the property, which must be declared by the shipper.'"**

These two sentences taken together seem rather to indicate that the court was seeking to find an assent in fact on the part of the shipper. Certainly, there was sufficient evidence that the shipper had entered into a contract with the carrier on the terms of the printed receipt. It is well settled in this Court,

> *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 427, 431,

as it is in Massachusetts,

> See *supra*, p. 13,

and in most other States, that mere acceptance in the course of a business transaction of a paper which purports to contain an agreement binds the acceptor to the terms of the document, although he may not choose to read it. Under this principle it is clear that the shipper in *Adams Express Company* v. *Croninger* had contracted to accept limited liability.

A sentence, which may be relied upon, from the later case of *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 652, has already been discussed.

X.

There is No Discrimination between Different Travellers involved in the Decision of the Massachusetts Court.

It has been repeatedly held that a fundamental purpose of the Interstate Commerce Act is to prevent discrimination between different members of the public. The way the law seeks to attain this end is by making the rate for the same service uniform for all members of the public. Therefore, one who contracts for a given service must pay the rate specified in the schedule for that service. If there is no rate specified in the schedule for such service, the carrier is under no obligation to give the service.

Chicago & Alton Railroad v. *Kirby*, 225 U. S. 155.

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639, 653.

In the Kirby case there was a special agreement that a shipment of horses should be expedited by the initial carrier, so as to make connection with a train operated by a subsequent carrier. The court held the shipper could not recover damages for breach of this special contract, saying,—

> **"for such a special service and higher responsibility, it might clearly exact a higher rate. But to do so, it must make and publish a rate open to all."**

In the present case there was no express agreement either as to the terms of the transportation or as to the rate.

The baggage was delivered for transportation without comment and received without comment. The legal implication from these facts is that the Railroad received the baggage as a common carrier and became liable as a common carrier is liable for goods intrusted to it in the absence of special contract.

> **"As a general rule, and in the absence of fraud or imposition, *a common carrier is answerable for the loss of a package of goods though he is ignorant of its contents, and though its contents are ever so valuable, if he does not make a special acceptance. This is reasonable because he can always guard himself by a special acceptance, or by insisting on being informed of the nature and value of the articles before receiving them.*"**
>
> Quoted from *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 340, 341, in *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639, 651.

The plaintiff in error made a general acceptance of the baggage in question, and the defendant in error became bound to pay for such service as a general acceptance by the carrier involved.

Even if it could be held, and it is submitted that it cannot be, that the defendant in error requested or agreed that her baggage should be transported free of charge, there would, nevertheless, be no assent to the limitation of liability. The result of this assumption would be that the carrier had engaged to carry the baggage free on terms of ordinary carriers' liability. This service would be legal, but the rate would not be legal. Where a contract is made with a carrier which requires the court to choose between the alternative of saying that the rate is illegal or that the service con-

tracted for is illegal, it is settled that the former alternative is the correct one.

Texas & Pacific Railroad Co. v. *Mugg*, 202 U. S. 242, following the case of *Gulf, etc., Railroad Co.* v. *Hefley*, 158 U. S. 98.

In these cases the service contracted for was permissible under the schedules of the company, but not at the agreed rate. The court held the carrier entitled to charge the schedule rate. This holding necessarily involves the proposition that the legal effect of the contract made between carrier and shipper was to bind the carrier to perform the agreed service for the legal rate; since it cannot be true that the carrier has the option either to give the service contracted for and collect the higher price or to give the service appropriate to the lower rate named in the shipping contract. To give the carrier such an option would allow discrimination very clearly. The result that such a contract is binding as to the service, though not as to the rate, is in accordance with the natural meaning of the Interstate Commerce law, which imposes a liability for the rate, even though the shipper did not agree in fact to that rate, but imposes no obligation as to service which was not agreed to by the parties or implied by the common law.

The consequence of the foregoing argument, therefore, is that the service for which the defendant in error contracted, namely, the transportation of her baggage under the ordinary obligations imposed upon a carrier, was legal and binding, but that the defendant in error must pay for that service the rates specified in the schedule. In this way the defendant in error will receive no advantage which is not open to every member of the public. There is as little discrimination in holding the carrier liable for

the larger service, if the passenger is compelled to pay the higher rate, as there is in holding the carrier bound only by the limited obligation in return for the limited rate.

It may be urged, however, that under the schedules in question payment in advance and agreement in advance for a stipulated value are essential to any undertaking by the carrier of full liability for a passenger's baggage. That is, that the only terms on which the carrier offers that service are terms which can no longer be fulfilled, and, indeed, cannot be fulfilled after the transportation has once been undertaken. This argument proceeds upon the assumption that payment of a rate in advance is a different thing from subsequent payment. It is submitted that this is not so, and that, though the carrier might exact payment in advance and should exact payment in advance, there is no discrimination involved in accepting payment subsequently.

But, if it be assumed that the schedules do not permit the carrier to fulfil the contract which it made to carry goods at full liability because the value was not previously declared and the rate paid in advance, what is the consequence? Certainly, under the decision of

Chicago & Alton Railroad v. *Kirby*, supra,

the carrier would not be liable on its contract. It would seem, therefore, that perhaps it might refuse to transport the goods altogether without thereby becoming liable, and that perhaps also it would never come under the liability of an insurer, which the common law casts upon a carrier. But that the unenforcibility of the contract would permit the carrier to destroy negligently the baggage intrusted to it and pay for the consequences of its negligence at its own valuation, is emphatically denied. It is not a special service or privilege which the defend-

ant seeks to enforce. Whether the agreement to carry baggage was valid or not, in any of its terms, is immaterial. The duty to restore the bailed goods without negligence is another matter. This Court has laid down the principle which governs the case. In

Merchants' Cotton Press Co. v. *Insurance Co.*, 151 U. S. 368, 388,

the court, quoting from the opinion of the Supreme Court of Tennessee, said:—

> "'We are of opinion, however, and rest our decision upon the ground that if it were assumed that the law was applicable, and the fact of agreement for rebate and special rate proven, it would not prevent liability on the part of the carrier for the freight received and covered by insurance in the hands of the carrier's agent. The law makes such agreements as to rebate, etc., void, but does not make the contract of affreightment otherwise void, and we think there is nothing in the law or the policy of it which requires a construction that would excuse a carrier from all liability when it made such a contract in connection with that for receipt and transportation of freight. Such a construction would encourage rather than discourage such unlawful agreements for rebates. The carrier might prefer them to liability for the freight. Such a contract as to rebate would be void, and . . . could not be enforced; but we think the shipper could nevertheless recover for loss of his freight through the carrier's negligence and, incidentally, of carrier's insurance. No different construction has yet been put upon the interstate commerce law so far as we are advised, and we decline to give it any other,'"

and added,—

> "We concur in the correctness of this conclusion of the State Supreme Court."

In the Merchants' Cotton Press Company case the court was dealing with the question of a rebate unquestionably illegal, but the court took the position insisted upon here, that the contract based on an illegal rate is not necessarily void. It is the rate, and not the promised service, which is illegal. And, even if the special contract is unenforcible, the carrier is not therefore excused from liability for the negligent destruction of the goods. That the court has indicated no disposition to retreat from the position taken in this case is shown by the following remarks in

Chicago & Alton Railroad v. *Kirby*, 225 U. S. 155, 166.

> **"The claim that the defendant in error may recover upon the carrier contract, stripped of the illegality under *Merchants' Cotton Press & Storage Co.* v. *Insurance Co. of N. A.*, 151 U. S. 368, is not presented by this record. The declaration counted only upon the breach of a special contract which was illegal. There was no count based upon the carrier's liability for negligence in not promptly shipping and delivering. The judgment was rested upon the damages resulting from the breach of the special contract, and not at all upon the liability of the carrier otherwise."**

Nor is the Railroad, on the assumption that its contract of carriage was invalid, in the position of a gratuitous bailee. It received the baggage as part of a business transaction in which it had a beneficial interest, and, in addition to the price of the passenger's ticket, received a payment on account of the weight of the baggage.

Judge v. *Northern Pacific Ry. Co.*, 189 Fed. Rep. 1014.

XI.

The Consequences of Upholding the Contention of the Plaintiff in Error show that the Contention must be Erroneous.

If the contention of the plaintiff in error is sound, the first thing that occurs to one who considers the question is that counsel and courts have been extraordinarily slow in discovering the law. The provision of the Statute upon which the plaintiff in error must rely has not been inserted therein in recent years: it was the fundamental basis of the original Statute.

By the terms of Section 6 in its original form the carrier was required to file schedules exactly as it must file them now. If it is now true that the statutory obligation to pay the rate imposes likewise a statutory obligation in the nature of a contract binding the shipper to assent to whatever terms of service are stated in the schedules as a consideration for a rate or as a condition precedent to the service, the same was true twenty years before this case arose. It must be assumed that since the passage of the Statute, or soon thereafter, carriers have been filing any limitations of liability which they proposed to exact as part of their contracts of carriage. Yet, when such limitations of liability have come up for discussion in the courts, the courts have continued to deal with the matter as if the Interstate Commerce Act had not been passed. In jurisdictions like Georgia, Iowa, and Pennsylvania, where the State courts have declared a different rule as to the validity of limitations of liability from that generally prevailing, it is true that the situation prior to the passage of the Carmack Amendment was not the

same as it has been subsequently; but in the great majority of the States, and especially in the Federal courts, there is no reason to distinguish the past situation from the present. Yet this Court and other courts have continued to speak of assent as requisite,—not the filing of a schedule asserting an assumed valuation or a limitation of liability.

See *supra*, p. 10.

But, apart from such considerations, the practical consequences would be most serious if the decision of the Massachusetts Supreme Court should be reversed, and it should be held that by filing schedules like those in question the carrier may bind a non-assenting and ignorant passenger in a way which prior to the passage of the Interstate Commerce Acts, could only be done by agreement; for, if so, the carrier may make all its contracts in this way.

The construction which the plaintiff in error seeks to attach to its schedules, and enforce, amounts to this: "Unless a passenger demands another form of contract, it will be assumed that he agrees that his baggage does not exceed $100 in value, and that the carrier's liability is limited to that amount." In the same way any stipulation qualifying the liability which the common law attaches to a carrier may be imposed. The schedule may read: "Unless a shipper demands an agreement extending the carrier's liability, and pays the rate specified in the schedules therefor, he shall be understood to agree that all claims must be made within ninety days," or "within thirty days," or "within ten days"; or "the shipper shall be understood to admit that a reasonable time for the despatch of goods is within" a stated period; or "to agree that the carrier shall not be liable for any

loss due to causes beyond its control;" or "that the damages shall be based on the value of the goods at the point of shipment."

It is unnecessary to suppose further particular cases of the sort, for it may be said broadly that all contracts between shipper and carrier may hereafter be made not by mutual assent, but by filing schedules, if the decision of the Massachusetts court is reversed.

Every contract which a carrier makes with its customers relates to the service for which a rate is the consideration. Every such contract, therefore, is as closely connected with the subject of rates as is a stipulation for limitation of liability. Indeed, almost all special contracts which the carrier makes *are* in some form limitations of the liability which the common law imposes. There will be no need hereafter to issue elaborate contracts in bills of lading, receipts, and tickets. It will be enough to file schedules at Washington containing a statement to this effect: "unless a shipper declares that he wishes to make shipment under terms of full carrier's liability and pays in advance the rate indicated in the schedules therefor, the carrier's obligations will be limited by the following conditions and stipulations."

The same method is equally applicable to the elaborate live-stock contracts, contracts on tickets, and indeed every special contract which a carrier enters into with shippers or passengers. If a limitation like the one involved in the case at bar can be imposed upon a passenger by filing the tariff, every other limitation can be similarly imposed.

It cannot be supposed that Congress intended to create a situation so unjust to the shipper; for the individual shipper is practically helpless, if the construction for which the Railroad contends is sound. The situation is

very different if a contractual obligation or an artificial estoppel is thrust upon the shipper from what it is where an obligation to pay the legal rate is imposed. So far as rates are concerned, the shipper has had the services for which he is forced to pay, and, if forced to pay more than he originally agreed, he, nevertheless, has received the legal equivalent. On the other hand, if forced to pay more than the legal rate, when he finds out the facts, he can obtain redress. So, too, if a shipper contracts for a service not specified in the carrier's schedules, there is no injustice in denying the shipper the benefit of the contract, since no one ought to have such services. But, if a carrier can make the mere tender of goods for transportation amount to whatever admission or contract it chooses to specify in its schedules, the position of the shipper who makes occasional shipments is hard indeed. As matter of fact, he will have no knowledge of the carrier's schedules, and, when he discovers the character of the obligations or admissions which the carrier has attached to the shipment, it will be too late to do anything, for he will find that his rights are bargained away in a contract which he never knew that he made.

As said by the Interstate Commerce Commission in *The Matter of Released Rates*, 13 Interstate Commerce Reports, 550, 562:—

> **"The carrier occupies a position of strategic advantage with respect to matters of transportation. The tariff rules and regulations are of its own making; the bills of lading and shipping receipts are drafted by its own attorneys. The shipper, on the other hand, has no such vantage ground. It cannot be expected that he will always be familiar with the terms of the carrier's rate schedules and bills of lading, or that he will invariably know his legal rights. Practically he often has no choice but to accept the terms that are offered him."**

The requirement of Section 20 of the Statute that a carrier shall give a receipt or bill, though it may in terms afford no protection against the use by the carrier of the means suggested for making contracts, since the statutory requirement is literally satisfied by a blank receipt, as indeed it is satisfied in the case of baggage by the giving of a check, nevertheless, it is submitted, shows an intention on the part of Congress that the usual practice of making contracts by means of bills of lading or receipts which state the terms of shipment, if other than full common law liability is contemplated, shall still continue.

And the proviso in the same section that nothing therein shall deprive any holder of such a receipt or bill of lading of any remedy or right of action which he has under existing law, while naturally construed as preserving only such rights as are consistent with the rest of the Statute, certainly indicates that Congress thought that a receipt or bill of lading still had some importance as a contract, and that the Statute had not substituted the filing of schedules as a universal method of making contracts. In

Kansas City Southern Ry. Co. v. *Carl*, 227 U. S. 639, 652,

the court said,—

> **"When there are two published rates, based upon difference in value, the legal rate automatically attaches itself to the declared or agreed value."**

This sentence states the law with perfect exactness, but it gives no authority for the converse statement that, where there are two published rates based upon difference in value, the legal contract automatically attaches itself to the agreed rate. The plaintiff in error must

necessarily contend not only for this proposition, but for the still more extreme one that, where goods are tendered for transportation and accepted without any agreement as to rates, the carrier can attach to the tender by force of its schedules both the rate and the contract which it wishes. It is submitted that under the guise of filing rates the carrier cannot automatically bind the shipper to the terms of a contract in this way.

XII.

The Schedules filed make the Defendant in Error Liable for the Excess Charge for Value and the Railroad Liable for the Full Value of the Baggage.

It has hitherto been assumed that the carrier's schedules have the meaning which it here seeks to attach to them; but this assumption is in fact unwarranted. The plaintiff in error is in reality seeking to violate the terms of its own schedules. These schedules expressly state that "150 lbs. of personal baggage not exceeding $100 in value will be checked free." The necessary implication from this statement is that baggage exceeding that value will not be checked free. It is further expressly stated in the schedule that baggage liability is limited to $100, unless a greater value is declared; but it is submitted that this provision cannot properly be interpreted as meaning that baggage known by both parties to be of a greater value than $100 *may* be checked free if the passenger prefers not to declare the true value. To interpret the schedule in this way is not only to violate its natural meaning, but to construe it in a way which

makes it a violation of rules laid down by the Interstate Commerce Commission prior to the loss of the baggage in question.

In Re Released Rates, 13 Interstate Commerce Reports, 550.

The Interstate Commerce Commission, after careful examination of the numerous authorities bearing upon the question, held that no agreement for a fictitious valuation or a limit of liability known to be less than the value of the goods could be supported, and the Commission said,—

> **"All tariff or classification rules which attempt to state, or which involve, any of the conditions or principles herein discussed should be constructed clearly in the light of these conclusions, and any such rules or regulations now existing which are not so constructed should be promptly revised,"**

and finally, on page 564, said,—

> **"We cannot emphasize too strongly our position that these rates must not be used by the carrier as a means for escaping the liability which the law absolutely forbids it to cast off."**

See also the remarks of this Court in

Kansas City Southern Ry. v. *Carl*, 227 U. S. 639, 650.

> **"An agreement to release such a carrier for part of a loss due to negligence is no more valid than one whereby there is a complete exemption. Neither is such a contract any more valid because it rests upon a consideration, than if it was without consideration."**

In the present case it is expressly found as a fact (Record, p. 12)

"That any reasonable person would infer from the outward appearance of the plaintiff's baggage when tendered to the defendant for transportation, that the value largely exceeded one hundred dollars."

It is submitted that under the schedule filed, if the carrier had refused to transport the baggage of the defendant in error, unless a charge based on its excess value was paid, the defendant in error could not have said effectively, "I will release you from any liability in excess of $100 and I demand that my baggage be carried free." The carrier could properly reply to such a contention: "Our schedules permit only baggage not exceeding $100 in value to be carried free. True, we cannot always tell when baggage does exceed in value that amount, and, under such circumstances, we doubtless often do carry baggage free which exceeds $100 in value, but in your case we cannot blind ourselves to the obvious fact that the baggage does exceed $100 in value, and we shall not take it unless paid the appropriate charge for so doing."

If the carrier might thus refuse to accept the baggage without extra charge, it *must* make the extra charge, and must give the service appropriate to that charge,—carriage at liability for full value.

That the carrier carelessly and wrongfully fails to get from many passengers the data which would enable it properly to classify the baggage presented to it for transportation involves the consequences only which follow from any careless failure by the carrier to classify goods properly; namely, that the shipper is liable for the rate appropriate to the proper classification. The necessary data are far easier to obtain for value than for weight. Requiring the passenger to declare a value as a condition precedent to taking the baggage is not difficult. Still

more easily the same result may be achieved, by giving a receipt which plainly states the assumption on which the carrier proceeds.

XIII.

There is No Hardship upon the Carrier in the Decision below.

There is no hardship on the carrier in the decision of the Supreme Court of Massachusetts. The obligation imposed by that decision is no greater than that which everywhere existed prior to the passage of the Interstate Commerce Acts, and still exists as to intrastate shipments. To make inquiry from the passenger or shipper, or at least to give a receipt or bill of lading which states the terms upon which the carrier is willing to accept the goods is all that is requisite. It is immaterial whether in any case the person presenting the goods has any knowledge of their value or authority to declare the same. The carrier may nevertheless demand from the person presenting the goods an acceptance or rejection of its terms, and the action of this person will bind the owner.

York County v. *Central Railroad*, 3 Wallace, 107, 113.

Squire v. *New York Central R.R.*, 98 Mass. 239, 248.

Hill v. *Boston, etc., Railroad Co.*, 144 Mass. 284.

XIV.

Conclusion.

In conclusion it is submitted that the rule of the common law has not been changed in regard to such a case as the present. It is said in

Adams Express Company v. *Croninger*, 226 U. S. 491, 511,

with reference to the carrier's liability under the Interstate Commerce Law,—

> **"The statutory liability, aside from responsibility for the default of a connecting carrier in the route, is not beyond the liability imposed by the common law as that body of law applicable to carriers has been interpreted by this court as well as many courts of the States,"** citing
>
> *Greenwald* v. *Barrett*, 199 N. Y. 170, 175.
> *Bernard* v. *Adams Express Co.*, 205 Mass. 254, 259.

And it is submitted that it is true conversely that the statute does not diminish the liability for negligence imposed on the carrier by the common law. Such liability may be enforced in the state courts,

Louisville & Nashville Railroad Co. v. *Cook Brewing Co.*, 223 U. S. 70,

since there is involved no question of administrative discretion.

SAMUEL WILLISTON,
Of Counsel for the Defendant in Error.

BOSTON AND MAINE RAILROAD *v.* HOOKER.

ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

No. 121. Argued December 10, 11, 1913.—Decided April 6, 1914.

Congress, by the Hepburn Act and the Carmack amendment in 1906, has regulated the subject of interstate transportation of property by Federal law to the exclusion of the States to control it by their own policy or legislation. *Pennsylvania* v. *Hughes*, 191 U. S. 477, distinguished, having been decided prior to the passage of the Hepburn Act.

Knowledge of the shipper that the rate is based on value is to be presumed from the terms of the bill of lading and of the published schedules filed with the Interstate Commerce Commission, and the effect of so filing the schedules makes the published rates binding upon shipper and carrier alike.

The limitation of liability of carriers for passengers' baggage is covered by the Interstate Commerce Act and the Carmack amendment to the Hepburn Act applies thereto as well as to liability for shipments of freight.

Under § 6 of the Interstate Commerce Act carriers must include in the schedules of rates filed regulations affecting passengers' baggage and the limitations of liability.

A provision in a tariff schedule that the passenger must declare the value of his baggage and pay stated excess charges for excess liability over the stated value to be carried free, is a regulation within the meaning of §§ 6 and 22 of the Interstate Commerce Act and as such is sufficient to give the shipper notice of the limitation.

In construing a statute, the practical interpretation given to it by the administrative body charged with its enforcement is entitled to weight.

The effect of permitting the carrier to file regulations as to passengers' baggage which limit its liability except on payment of specified rates is not to change the common law rule that the carrier is an insurer against its own negligence but simply that the carrier shall obtain commensurate compensation for the responsibility assumed.

Where charges for full liability as specified in the published tariff are unreasonable, they can only be attacked before the Interstate Commerce Commission.

Congress is familar with the customs of travelers including that of checking baggage; and so *held* that a baggage check is sufficient compliance as to passengers' baggage with the provision in the Carmack amendment for issuing a receipt or bill of lading for the shipment.

If the subject needs regulation it is within the power of the Interstate Commerce Commission, under §§ 1 and 15 of the Act of June 18, 1910, to make requirements as to checks or receipts to be given for baggage by common carriers.

209 Massachusetts, 598, reversed.

THE facts, which involve the construction of the Car-

mack Amendment to the Hepburn Act and the right of a common carrier which has filed schedules containing regulations as to passengers' baggage to limit its liability for loss of such baggage caused by its own negligence to the extent and in the manner specified in the schedules, are stated in the opinion.

Mr. Frederick N. Wier, with whom *Mr. Edgar J. Rich* was on the brief, for plaintiff in error:

Congress has assumed exclusive jurisdiction of the subject-matter in issue thereby making the determination of the effect and validity of the baggage regulations of the plaintiff in error a Federal question.

Rates, parts of rates, and regulations affecting or determining rates, fares, and charges, or the value of the service rendered, have the force of law and therefore enter into and become a part of all contracts for interstate transportation.

The regulations contained in the schedules of the railroad company providing for carrying 150 pounds of personal baggage not exceeding $100 in value free for each passenger on presentation of a full ticket and specifying rates for excess value, have the force of law.

Such regulations are not void as being contrary to the common law or as against public policy or in violation of any Federal statute.

The reasonableness of the regulations is not in issue.

The regulations do not offend any principle of common law or public policy.

The regulations are not in violation of any Federal statute.

Such regulations are a part of the rates, and are regulations affecting or determining rates, fares, and charges, or the value of the service rendered, and when contained in

the schedules of the plaintiff in error had the force of law and entered into and became a part of the contract with defendant in error.

The regulations affected and determined rates, fares, and charges.

The regulations affected and determined the value of the service rendered.

Upon the ground of estoppel the limit of liability is $100 and would be even if the regulations of the railroad company were confined to the first paragraph.

In support of these contentions, see *Adams Ex. Co.* v. *Croninger*, 226 U. S. 491; *Andrews* v. *Andrews*, 188 U. S. 14; *Alair* v. *North Pacific R. R.*, 53 Minnesota, 160; *Armour Packing Co.* v. *United States*, 209 U. S. 56; *Bernard* v. *Adams Exp. Co.*, 205 Massachusetts, 254; *Blumantle* v. *Fitchburg R. R.*, 127 Massachusetts, 322; *Chicago & Alton Ry. Co.* v. *Kirby*, 225 U. S. 155; *Fourth Nat. Bank* v. *Olney*, 63 Michigan, 58; *Hammond* v. *Whittredge*, 204 U. S. 538; *Hart* v. *Penn. R. R. Co.*, 112 U. S. 331; *Hoeger* v. *Chi., Mil. & St. P. Ry. Co.*, 63 Wisconsin, 100; *Re Released Rates*, 13 I. C. C. 550; *Jordan* v. *Massachusetts*, 225 U. S. 167; *Kansas City Ry. Co.* v. *Carl*, 227 U. S. 639; *Louis. & Nash. Ry.* v. *Motley*, 219 U. S. 467; *Mo., Kan. & Tex. Ry. Co.* v. *Harriman*, 227 U. S. 657; *N. Y. C. & H. R. R. R. Co.* v. *Fraloff*, 100 U. S. 531; *N. Y., N. H. & H. R. R.* v. *Int. Com. Comm.*, 200 U. S. 361; *Polleys* v. *Black River Imp. Co.*, 113 U. S. 81; *Squire* v. *N. Y. C. R. R. Co.*, 98 Massachusetts, 239; *Stanley* v. *Schwalby*, 162 U. S. 255; *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Tex. & Pac. Ry. Co.* v. *Mugg*, 202 U. S. 242; *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *York Co.* v. *Central R. R.*, 3 Wall. 107.

Mr. Samuel Williston for defendant in error:

The carrier and its agents, having received possession of the goods, were charged with the duty of delivering them

or explaining why that had not been done. *Galveston Ry. Co.* v. *Wallace*, 223 U. S. 481, 492.

There is no question involved of the limits of Federal and state laws.

By the rule of the common law a limitation of liability was invalid unless a special contract was made by which the shipper agreed thereto, or unless the shipper was estopped by misrepresentation. *Brown* v. *Eastern R. R.*, 11 Cush. 97; *Malone* v. *Boston & Worcester R. R.*, 12 Gray, 388; *Graves* v. *Adams Exp. Co.*, 176 Massachusetts, 280; *John Hood Co.* v. *Am. Pneumatic Co.*, 191 Massachusetts, 27; *The Majestic*, 166 U. S. 375; *Henderson* v. *Stevenson*, L. R. 2 H. L. (Sc.) 470, 481.

There can be no limitation of liability without the assent of the shipper. *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 427, 431; *N. J. Steam Nav. Co.* v. *Merchants' Bank*, 6 How. 344.

The law in the absence of special contract fixes the degree of care and diligence due from the railroad company to persons carried on its trains. *York Co.* v. *Central Railroad*, 3 Wall. 107; *Railroad Co.* v. *Lockwood*, 17 Wall. 357; *Hart* v. *Pennsylvania R. R.*, 112 U. S. 331, 343; *Liverpool Steam Co.* v. *Phœnix Ins. Co.*, 129 U. S. 397, 441, 442; *Saunders* v. *Southern Railway*, 128 Fed. Rep. 15.

Similar decisions have been made in recent years in precisely the same manner as before the passage of the Interstate Commerce Acts. *Williams* v. *Central R. R. Co.*, 183 N. Y. 518; *S. C.*, 93 N. Y. App. Div. 582; *Martin* v. *Central R. R. Co.*, 121 N. Y. App. Div. 552; *Homer* v. *Oregon Short Line*, 128 Pac. Rep. 522; *Black* v. *Atlantic Coast Line*, 82 So. Car. 478; Elliott on Railroads (4th ed.), § 1510; Hutchinson on Carriers (3d ed.), §§ 401, 405; *Pennsylvania R. R.* v. *Hughes*, 191 U. S. 477; *Adams Express Co.* v. *Green*, 112 Virginia, 527.

A few States have upheld to its full extent a contract of valuation or limiting liability, but have also held that

no merely formal assent can be inferred from accepting a bill of lading or a receipt without actual knowledge of its contents, and without the shipper's attention being called by the carrier to the limitation, though an agreement made with full knowledge of the situation would bind the shipper. See Hutchinson, Carriers (3d ed.), § 410; *Plaff* v. *Pacific Exp. Co.*, 251 Illinois, 243; *Hill* v. *Adams Exp. Co.*, 82 N. J. L. 373; *Wichern* v. *U. S. Exp. Co.*, 83 N. J. L. 241.

The ground upon which the validity of a limitation upon a recovery for loss or damage due to negligence depends is that of estoppel. *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, 476; *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 651. *Adams Express Co.* v. *Croninger*, 226 U. S. 491, distinguished.

While in Massachusetts it has been the law that the acceptance of a document binds one who receives it, though he may not choose to read it, as held in *Grace* v. *Adams*, 100 Massachusetts, 505; *Grinnell* v. *West. Un. Tel. Co.*, 113 Massachusetts, 299; *Hoadley* v. *Nor. Transp. Co.*, 115 Massachusetts, 304; *Clement* v. *West. Un. Tel. Co.*, 137 Massachusetts, 463; *Graves* v. *Adams Exp. Co.*, 176 Massachusetts, 280, and see *Cau* v. *Tex. & Pac. Ry. Co.*, 194 U. S. 427, 431, it has also been the law both of this court and of the Massachusetts court that a public notice of an asserted limitation by the carrier, even though the shipper was aware of it (which was not the fact in the case at bar), does not have the effect of an agreement or representation. Some actual assent is necessary. *N. J. Steam Nav. Co.* v. *Merchants' Bank*, 6 Howard, 344, 382; *Railroad Co.* v. *Manufacturing Co.*, 16 Wall. 318, 328; *Judson* v. *West. R. R. Corp.*, 6 Allen, 486, 491; *Buckland* v. *Adams Exp. Co.*, 97 Massachusetts, 124, 131. See also 1 Hutchinson on Carriers, 3d ed., § 406; *Henderson* v. *Stevenson*, L. R. 2 H. L. (Sc.) 470; *Richardson* v. *Rowntree* (1894), A. C. 217; *Parker* v. *Southeastern Ry. Co.*, 2 C. P. D. 416.

A limitation of liability is not a rate. It is a limitation or diminution of the service, agreed to generally in order to secure a lower rate. The carrier's reward ought to be proportionate to the risk. *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 650; *Railroad Co.* v. *Fraloff*, 100 U. S. 24, 27.

The *Carl Case* is not to be understood as meaning that a limitation of liability or the valuation on which such a limitation is based is literally part of the rate itself. *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509; *Bernard* v. *Adams Exp. Co.*, 205 Massachusetts, 254, 259.

It is a contract as to what the property is in reference to its value. The only ground upon which the limitation can stand is that it was filed as part of the rate. Estoppel can in no way enlarge or diminish or in any way affect a filed rate. *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469, 475; *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 651.

The amendments to the Interstate Commerce Act in 1906 did not change the law either as to what a rate is or what the effect is of a rate duly filed. Whatever is now binding as a rate upon a shipper was binding before 1906. *The Majestic*, 166 U. S. 375; *Cau* v. *Tex. & Pac. Ry. Co.*, 194 U. S. 427, 431; *Saunders* v. *Southern Ry.*, 128 Fed. Rep. 15; *Chi., Mil. &c. Ry. Co.* v. *Solan*, 169 U. S. 133; *Pennsylvania R. R.* v. *Hughes*, 191 U. S. 477.

A limitation of liability in any form except by contract or a representation by the shipper has never been permitted by the law. The attempt to escape from this rule of the common law is as ineffectual as the attempt to escape the statutory liability cast upon an initial carrier by the Carmack Amendment, which was held futile in *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186; *Galveston &c. Ry. Co.* v. *Wallace*, 223 U. S. 481; *Norf. & West. Ry. Co.* v. *Dixie Tobacco Co.*, 228 U. S. 593.

A limitation of liability is not within the meaning of the

words "Rule, Regulation, or Practice." *Curry* v. *Marvin*, 2 Florida, 411, 415; *In re Leasing of State Lands*, 18 Colorado, 359; *Martin* v. *Cent. R. R. Co.*, 121 N. Y. App. Div. 552, 553. *Railroad Company* v. *Fraloff*, 100 U. S. 24, 27, distinguished.

A regulation which needs the assent of the person who is to be regulated as a condition of its efficacy is not properly called a regulation. It is not even an offer, until brought to the knowledge of the person to whom it is addressed.

There is no provision for the filing of contracts with shippers and no method of making them public defined in the statute. *Armour Packing Co.* v. *United States*, 209 U. S. 56, 81; *Louis. & Nash. Ry.* v. *Mottley*, 219 U. S. 467, 479.

The fact that a proposed limitation of a carrier's liability must be filed as part of the tariff does not involve the conclusion that all shippers thereupon become bound by the limitation. *Wehmann* v. *Minneapolis Ry. Co.*, 58 Minnesota, 22, 29; *Mannheim Ins. Co.* v. *Erie &c. Transp. Co.*, 72 Minnesota, 357.

The passenger was not chargeable with constructive assent to the asserted limitation of liability.

A law or a statute is binding, whether persons subject to the law are aware of it or not. A rate duly filed is unquestionably equally binding; but shippers are not conclusively presumed to know it. *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 652; *Pennsylvania R. R. Co.* v. *Int. Coal Co.*, 230 U. S. 184, 197; *Potter* v. *United States*, 155 U. S. 438; *Standard Oil Co.* v. *United States*, 164 Fed. Rep. 376; *Standard Oil Co.* v. *United States*, 179 Fed. Rep. 614; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 85.

There is no estoppel barring defendant in error from showing the value of her baggage. *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 651; *Matter of Released Rates*, 13 I. C. C. 550

Judicial decisions do not support the construction of the statute contended for by the plaintiff in error.

Although a shipper has no redress because a rate is unreasonable, except by the direct proceedings allowed by the act, *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Robinson* v. *Balt. & Ohio R. Co.*, 222 U. S. 506; *Pennsylvania R. R. Co.* v. *Int. Coal Co.*, 230 U. S. 184; *Mitchell Coal Co.* v. *Pennsylvania R. R. Co.*, 230 U. S. 247, and the unreasonableness of a rule, regulation, or practice of a carrier must be objected to in the same way, *Balt. & Ohio R. R.* v. *United States*, 215 U. S. 481; *Morrisdale Coal Co.* v. *Pennsylvania R. R. Co.*, 230 U. S. 304, an assertion contained in the tariff, even if made in terms (as it was not), that the passenger does make such an agreement, still less an assertion that liability is limited, unless a contract is made, is neither a rate, a rule, a regulation, or a practice, and the question of its reasonableness can be raised in the courts. *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491; *Chi., B. & Q. Ry. Co.* v. *Miller*, 226 U. S. 513; *Chicago, St. Paul &c. Ry. Co.* v. *Latta*, 226 U. S. 519; *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Kansas City Ry. Co.* v. *Carl*, 227 U. S. 639; *Mo., Kans. & Tex. Ry. Co.* v. *Harriman*, 227 U. S. 657, do not conflict with this; and see *Bernard* v. *Adams Exp. Co.*, 205 Massachusetts, 254; *Greenwald* v. *Barrett*, 199 N. Y. 170.

There is no discrimination between different travellers involved in the decision of the Massachusetts court. *Chicago & Alton R. R.* v. *Kirby*, 225 U. S. 155; *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 653. *Tex. & Pac. R. R. Co.* v. *Mugg*, 202 U. S. 242; *Gulf &c. R. R. Co.* v. *Hefley*, 158 U. S. 98, distinguished. And see *Merchants Press Co.* v. *Insurance Co.*, 151 U. S. 368, 388; *Judge* v. *Nor. Pac. Ry. Co.*, 189 Fed. Rep. 1014.

The consequences of upholding the contention of the plaintiff in error show that the contention must be erroneous. *Matter of Released Rates*, 13 I. C. C. 550.

The schedules filed make the defendant in error liable for the excess charge for value and the railroad liable for the full value of the baggage. *Matter of Released Rates*, 13 I. C. C. 550; *Kansas City So. Ry. Co.* v. *Carl*, 227 U. S. 639, 650.

There is no hardship upon the carrier in the decision below. The obligation imposed by that decision is no greater than that which everywhere existed prior to the passage of the Interstate Commerce Acts, and still exists as to intrastate shipments. *York County* v. *Central Railroad*, 3 Wall. 107, 113; *Squire* v. *N. Y. Central R. R.*, 98 Massachusetts, 239, 248; *Hill* v. *Boston &c. Railroad Co.*, 144 Massachusetts, 284.

The rule of the common law has not been changed in regard to such a case as the present. *Adams Exp. Co.* v. *Croninger*, 226 U. S. 491, 511; *Greenwald* v. *Barrett*, 199 N. Y. 170, 175; *Bernard* v. *Adams Exp. Co.*, 205 Massachusetts, 254, 259.

The statute does not diminish the liability for negligence imposed on the carrier by the common law. Such liability may be enforced in the state courts. *Louis. & Nash. R. R. Co.* v. *Cook Brewing Co.*, 223 U. S. 70.

Mr. Justice Day delivered the opinion of the court.

Katharine Hooker brought an action in the Superior Court of Middlesex County, Massachusetts, to recover from the Boston & Maine Railroad as a common carrier on account of the loss of certain baggage belonging to her, which had been transported by the defendant in interstate commerce from Boston, Massachusetts, to Sunapee Lake station, New Hampshire, on September 15, 1908. The plaintiff recovered a judgment for the value of the baggage lost with interest. The case was taken to the Supreme Judicial Court of Massachusetts upon exceptions of the defendant, and upon its rescript, returned to the

Superior Court overruling the exceptions (209 Massachusetts, 598), judgment was there entered for the plaintiff for $2,253.77.

The defendant insists that the recovery of the plaintiff should have been limited to the sum of $100, in view of certain requirements made by it concerning the transportation of baggage and filed with the Interstate Commerce Commission. From the findings of fact it appears that the baggage was checked upon a first class ticket purchased for the plaintiff (although not used by her, she traveling upon another similar ticket purchased by herself); that at the time the baggage was checked the plaintiff had no notice of the regulations hereinafter referred to limiting the liability of the defendant (further than such notice is to be presumed from the schedules filed and posted as hereinafter stated); that no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value; that there was no evidence that any more expensive or different mode of transportation was adopted for baggage the value of which was declared to exceed $100 than for other baggage; that any reasonable person would infer from the outward appearance of the plaintiff's baggage when tendered to the defendant for transportation that the value largely exceeded $100, and that the loss of plaintiff's baggage was due to the negligence of defendant.

The court further found that previous to and during September, 1908, the defendant had published and kept open for inspection and filed with the Interstate Commerce Commission, in accordance with the act of Congress relating to interstate commerce and amendments thereto and the orders and regulations of the Commission, schedules giving the rates, fares and charges for transportation between different points, including Boston and Sunapee Lake station, all terminal, storage and other charges required by the Commission, all privileges and facilities granted or allowed, and all rules or regulations

which in any way affected or determined such rates, fares and charges or the value of the service rendered to passengers; that during the same time, in accordance with an order of the Commission of June 2, 1908, making comprehensive regulations as to rate and fare schedules, the defendant had placed with its agent in Boston all rate and fare schedules and the terminal and other charges applicable to that station, and had enabled and required him to keep in accessible form a file of such schedules, and had instructed him to give information contained therein to all seeking it and to afford to inquirers opportunity to examine the schedules, and that the defendant in the manner shown and in all other ways conformed to the acts of Congress and the orders and regulations of the Commission with reference to such schedules. The court also found that the schedules contained provisions limiting the free transportation of baggage to a certain weight and the liability of the defendant to $100, followed by a table of charges for excess weight, and also contained the following provision:

"For excess value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents.

"Baggage liability is limited to personal baggage not to exceed one hundred dollars in value for a passenger presenting a full ticket and fifty dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of taking the baggage" (p. 600); that the excess charge for transporting baggage valued at $1,904.50 which was the value of the baggage lost, from Boston to Sunapee Lake station during September, 1908, according to the schedules, was $4.75; that notices were posted at or near the offices where passengers' tickets were sold in the Boston

station stating that tariffs naming the rates on interstate traffic were on file with the agent and would be furnished for inspection upon application, and that notices were posted in the baggage room of that station, in a conspicuous place and in sight of persons using the room for checking baggage, reading that personal baggage not exceeding $100 in value would be checked free for each passenger on presentation of a first class ticket and containing information with reference to excess weight. And the court further found that the plaintiff did not declare at the time her baggage was checked that it exceeded $100 in value and did not pay any charges for valuation in excess of that amount.

It is to be borne in mind that the action as tried and decided in the state court was not for negligence of the Railroad Company as a warehouseman for the loss of the baggage after its delivery at Sunapee Lake station, but was solely upon the contract of carriage in interstate commerce.

The Supreme Judicial Court of Massachusetts, in deciding the case, held that the Interstate Commerce Act did not in any wise change the common law rule, applicable in Massachusetts, that regulations of this character, limiting the amount of recovery for baggage lost, must be brought home to the knowledge of the shipper and assented to or circumstances shown from which assent might be implied. In reaching this conclusion that learned court relied upon the case of *Pennsylvania R. R. Co.* v. *Hughes*, 191 U. S. 477, in which case it was held that a State might apply its local law and policy to recovery for the loss of a horse shipped in interstate commerce from Albany, New York, to Cynwyd, in the State of Pennsylvania, and injured by the negligence of a carrier in the latter State, notwithstanding the bill of lading contained an express condition that the carrier assumed liability to the extent only of the agreed valuation in event of loss.

It was further held in the *Hughes Case* that the Interstate Commerce Act, in the respect then under consideration, had not enacted an exclusive rule upon which recovery might be had governing responsibility for loss, and that as the law then stood the State might enforce its own regulations authorized by statute or judicial decision as to responsibility for such negligence.

Since the decision in the *Hughes Case* the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 584, has been passed, and this court has held that by virtue of that act (particularly § 20, the Carmack Amendment) the subject of interstate transportation of property has been regulated by Federal law to the exclusion of the power of the States to control in such respect by their own policy or legislation. In this connection we may refer to the cases of *Adams Express Co.* v. *Croninger*, 226 U. S. 491; *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639; *Missouri, Kansas & Texas Ry. Co.* v. *Harriman*, 227 U. S. 657.

The cases in 226 and 227 U. S., it is true, involved liability for express or freight shipments made upon express receipts, bills of lading or separate contracts, showing on their face or by reference to tariffs the opportunity for valuation for the purpose of fixing the rate and liability, and the limitation appearing in such form of contract was declared to be valid and effectual to relieve the carrier from a greater liability than that therein expressed. But the court did not stop there: In *Adams Express Co.* v. *Croninger*, *supra*, p. 509, it said: "The knowledge of the shipper that the rate was based upon the value is to be presumed from the terms of the bill of lading and of the published schedules filed with the Commission." In *Kansas City Southern Ry. Co.* v. *Carl*, *supra*, p. 652, this court said: "The valuation the shipper declares determines the legal rate where there are two rates based upon valuation. He must take notice of the rate applicable,

and actual want of knowledge is no excuse. The rate when made out and filed, is notice, and the effect is not lost, although it is not actually posted in the station. *Texas & Pacific Railway* v. *Mugg*, 202 U. S. 242; *Chicago & Alton Ry.* v. *Kirby*, 225 U. S. 155. It would open a wide door to fraud and destroy the uniform operation of the published tariff rate sheets. When there are two published rates, based upon difference in value, the legal rate automatically attaches itself to the declared or agreed value. Neither the intentional nor accidental misstatement of the applicable published rate will bind the carrier or shipper. The lawful rate is that which the carrier must exact and that which the shipper must pay. . . (p. 654). To the extent that such limitations of liability are not forbidden by law, they become, when filed, a part of the rate." And in *Missouri, K. & T. R. Co.* v. *Harriman, supra*, this court said that the shipper was compelled to take notice of the rate sheets contained in tariff schedules, (p. 669), "not only because referred to in the contract signed by them, but because they had been lawfully filed and published. . . (p. 671) When the carrier graduates its rates by value and has filed its tariffs showing two rates applicable to a particular commodity or class of articles, based upon a difference in valuation, the shipper must take notice, for the valuation automatically determines which of the rates is the lawful rate." In *Chicago, R. I. & P. Ry. Co.* v. *Cramer*, 232 U. S. 490, this court said, p. 493: "That rule of liability [the uniform rule established by the Hepburn Act] is to be enforced in the light of the fact that the provisions of the tariff enter into and form a part of the contract of shipment, and if a regularly filed tariff offers two rates, based on value, and the goods are forwarded at the low value in order to secure the low rate, then the carrier may avail itself of that valuation when sued for loss or damage to the property." And in *Great Northern Ry. Co.* v. *O'Connor*, 232

U. S. 508, this court said: "But so long as the tariff rate, based on value, remained operative it was binding upon the shipper and carrier alike and was to be enforced by the courts in fixing the rights and liabilities of the parties. The tariffs are filed with the Commission and are open to inspection at every station. In view of the multitude of transactions, it is not necessary that there shall be an inquiry as to each article or a distinct agreement as to the value of each shipment. If no value is stated the tariff rate applicable to such a state of facts applies. If, on the other hand, there are alternative rates based on value and the shipper names a value to secure the lower rate, the carrier, in the absence of something to show rebating or false billing, is entitled to collect the rate which applies to goods of that class, and if sued for their loss it is liable only for the loss of what the shipper had declared them to be in class and value."

Before these cases were decided this court had held that the effect of filing schedules of rates with the Interstate Commerce Commission was to make the published rates binding upon shipper and carrier alike, thus making effectual the purpose of the act to have but one rate, open to all alike and from which there could be no departure. *Gulf, Colorado and Santa Fe Ry.* v. *Hefley*, 158 U. S. 98; *Texas & Pac. Ry. Co.* v. *Mugg*, 202 U. S. 242; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 81; *Louis. & Nash. R. R.* v. *Mottley*, 219 U. S. 467, 476. This principle it will be perceived was fully recognized in the series of cases decided since the passage of the Hepburn Act, beginning with the case of *Adams Express Co.* v. *Croninger*, *supra*. It is true that the Carmack Amendment requires a receipt or bill of lading to be issued concerning shipments of property in interstate commerce and that in the cases construing that amendment a bill of lading was issued, and according to the circumstances of the case the bill of lading and its effect are discussed in each of these, but the

effect of filing the schedule is not lost sight of and the doctrine of the previous cases as to the purpose of filing and the necessity of adherence to such schedule is uniformly recognized.

The court below, after conceding that the subject-matter of passenger's baggage in interstate travel is within the control of Congress, and saying that there was no specific regulation respecting it, said (p. 602):

"The precise position of the defendant is that as the limitation of liability for baggage was filed and posted as a part of its schedules for passenger tariff, the limitation thereby became and was an essential part of its rate, from which under the interstate commerce law it could not deviate, and by which the plaintiff was bound, regardless of her knowledge of or assent to it. If the premise is sound, then the conclusion follows, for the public are held inexorably to the rate published, regardless of knowledge, assent or even misrepresentation. *Gulf, Colorado & Santa Fe Railway* v. *Hefley*, 158 U. S. 98. *Texas & Pacific Railway* v. *Mugg*, 202 U. S. 242. *Melody* v. *Great Northern Railway*, 25 So. Dak. 606."

It follows therefore, from the previous decisions in this court, that if it be found that the limitation of liability for baggage is required to be filed in the carrier's tariffs, the plaintiff was bound by such limitation. Having the notice which follows from the filed and published regulations, as required by the statute and the order of the Interstate Commerce Commission, she might have declared the value of her luggage, paid the excess tariff rate and thus secured the liability of the carrier to the full amount of the value of her baggage, or she might, for the purpose of transportation, have valued it at $100 and received free transportation and liability to that extent only, or, as she did, she might have made no valuation of her baggage, in which event the rate and the corresponding liability would have automatically attached. As to the finding

that the plaintiff's baggage was apparently worth more than $100, as above set forth, it appears that the contents of the two trunks and suit case were not disclosed or known to the carrier, and the finding in this respect, necessarily based on the appearance of the baggage, cannot be said to show a procurement of transportation in violation of the requirements of the filed schedules at a rate disproportionate to its known value.

Let us now turn to the Interstate Commerce Act and see whether the matter of the limitation of baggage liability is covered by that act. Section 6 provides (as amended by § 2 of the Hepburn Act, June 29, 1906, c. 3591, 34 Stat. 584, 586):

"That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or

consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

* * * * * * * *

"No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs. . . ."

It is to be observed that the schedules are required to state, among other things, in naming certain charges, "all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee." The question then is did the limitation as to liability for baggage based

upon the requirement to declare its value when more than $100 was to be recovered come within that provision.

It seems to us that the ordinary signification of the terms used in the act would cover such requirements as are here made for the amount of recovery for baggage lost by the carrier. It is a regulation which fixes and determines the amount to be charged for the carriage in view of the responsibility assumed, and it also affects the value of the service rendered to the passenger. Such requirements are spoken of, in decisions dealing with them, as regulations; as, a common carrier "may prescribe *regulations* to protect himself against imposition and fraud, and fix a rate of charges proportionate to the magnitude of the risks he may have to encounter." *York Co.* v. *Central R. R.*, 3 Wall. 107, 112. "It is undoubtedly competent for carriers of passengers, by specific *regulations*, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such *regulations* may be practically effective and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies." *Railroad Co.* v. *Fraloff*, 100 U. S. 24, 27.

Mr. Justice Brewer, sitting in the Circuit Court, in *Ames* v. *Union Pac. Ry. Co.*, 64 Fed. Rep. 165, 178, thus defined the term regulation: "Within the term 'regulation'

are embraced two ideas: One is the mere control of the operation of the roads, prescribing the rules for the management thereof,—matters which affect the convenience of the public in their use. Regulation, in this sense, may be considered as purely public in its character, and in no manner trespassing upon the rights of the owners of railroads. But within the scope of the word 'regulation,' as commonly used, is embraced the idea of fixing the compensation which the owners of railroad property shall receive for the use thereof; and when regulation, in this sense, is attempted, it necessarily affects the property interests of the railroad owners; and it is 'regulation' in this sense of the term."

Turning to the act itself we think the conclusion that this limitation is a regulation required to be filed by the act is strengthened by section 22 [1] which provides: ". . . But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, *together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act.*" This section would indicate that Congress thought that § 6 of the act had to do with specifications of the amount of baggage which would be carried free and that such regulations should be filed under the requirement of § 6 to which it referred.

This conclusion is further strengthened by the action of the Interstate Commerce Commission, in requiring by its Tariff Circular No. 15–A, entitled "Regulations Governing the Construction and Filing of Freight Tariffs and Classi-

[1] As amended by the Act of Feb. 8, 1895, c. 61, 28 Stat. 643.

fication and Passenger Fare Schedules," effective April 15, 1908, and in force at the time of the loss here in question, that:

"34. Tariffs shall contain, in the order named

"(g) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the fares named in the tariff shall be entered. . . . These rules shall include . . . the general baggage regulations, and also schedule of excess-baggage rates, unless such excess-baggage rates are shown in tariff in connection with the fares."

This requirement is a practical interpretation of the law by the administrative body having its enforcement in charge, and is entitled to weight in construing the act.

The act of June 18, 1910 (c. 309, 36 Stat. 539, 546), defining, in § 1, the duties of carriers to make just and reasonable regulations affecting, among other things, the carrying of personal, sample and excess baggage, may be noted in passing. This statute was before the Commission in a case involving such regulations. Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292. Concerning it the Commission, by Clark, Chairman, said (p. 293):

"Prior to June 18, 1910, the act to regulate commerce contained no specific provision relating to the interstate transportation of baggage, except in connection with the issuance of joint interchangeable mileage tickets. The Commission had, however, under authority of section 6, required carriers to publish and file their general baggage regulations and their schedules of excess-baggage rates. Section 1 was amended on the date named, the amendment, in so far as it is material, reading as follows:

"It is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe,

and enforce . . . just and reasonable regulations and practices affecting classifications, . . . the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, . . . the carrying of personal, sample, and excess baggage.'"

And it is to be observed that the Commission considers its requirement with reference to including baggage regulations in the tariff schedules, quoted above, as adequate, for the same provisions appear in its current circular.

We are therefore of the opinion that the requirement published concerning the amount of the liability of the defendant based upon additional payment where baggage was declared to exceed $100 in value was determinative of the rate to be charged and did affect the service to be rendered to the passenger, as it fixed the price to be paid for the service rendered in the particular case, and was, therefore, a regulation within the meaning of the statute.

By requiring the baggage regulations, including the excess valuation rate, to be filed and become part of the tariff schedules, the rule of the common law that the carrier becomes an insurer of the safety of baggage against accidents not the act of God or the public enemy or the fault of the passenger (the rule established in this country, 3 Hutchinson on Carriers, § 1241) was not changed. The effect of such filing is to permit the carrier by such regulations to obtain commensurate compensation for the responsibility assumed for the safety of the passenger's baggage, and to require the passenger whose knowledge of the character and value of his baggage is peculiarly his own to declare its value and pay for the excess amount. There is no question of the reasonableness or propriety of making such regulations, which would be binding upon the passenger if brought to his knowledge in such wise as

to make an agreement or what is tantamount thereto. This much is conceded by the learned counsel for the plaintiff in error. The liability of a carrier under the Interstate Commerce Act was said, in the *Croninger Case* (226 U. S. p. 511), to be (aside from the responsibility for the default of a connecting carrier) "not beyond the liability imposed by the common law as that body of law applicable to carriers has been interpreted by this court as well as many courts of the States." And in that case (p. 509) it was laid down as the established rule of common law "as declared by this court in many cases that such a carrier may by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates of charges proportioned to the amount of the risk." And see the previous cases in this court there cited. But the effect of the regulations, filed as required, giving notice of rates based upon value when the baggage to be transported was of a higher value than $100, and the delivery and acceptance of the baggage without declaration of value or notice to the carrier of such higher value, charges the carrier with liability to the extent of $100 only.

The language of the regulation filed, reads: Baggage liability is limited to personal baggage not to exceed $100 in value, etc., unless a greater value is declared, etc. We have said that this limitation does not relieve from the insurer's liability when the loss occurs otherwise than by negligence, and we think applies equally when negligence of the carrier is the cause of loss, as is found in this case. The effect of the filing gives the regulation as to baggage the force of a contract determining "Baggage liability." In *Hart* v. *Pennsylvania R. R.*, 112 U. S. 331, 341, followed in the later cases in this court, it was held that a recovery may not be had above the amount stipulated though the loss results from the carrier's negligence. "The carrier

must respond for negligence up to that value." The discussion and conclusion reached in the *Croninger* and *Carl Cases, supra*, leave nothing to be said on this point. This rule is recognized in New York, *Tewes* v. *North German Lloyd S. S. Co.*, 186 N. Y. 151; *Gardiner* v. *N. Y. Central & H. R. R. R.*, 201 N. Y. 387.

If the charges filed were unreasonable, the only attack that could be made upon such regulation would be by proceedings contesting their reasonableness before the Interstate Commerce Commission. While they were in force they were equally binding upon the railroad company and all passengers whose baggage was transported by carriers in interstate commerce. This being the fact, we think the limitation of liability to $100 fixed the amount which the plaintiff could recover in this case, and there was error in affirming the recovery for the full value of the baggage, in the absence of a declaration of such value and payment of the additional amount required to secure liability in the greater sum.

We do not think the requirement of the Carmack Amendment, that a railway company receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor, required other receipts than baggage checks, which it is shown were issued when the baggage was received in this case. When the Amendment was passed Congress well knew that baggage was not carried upon bills of lading, and that carriers had been accustomed to issue checks upon receipt of baggage. We do not think it was intended to require a departure from this practice when the matter was placed under regulation by schedules filed and subject to change for unreasonableness upon application to the Commission. Such checks are receipts, and there is no special requirement in the statute as to their form. It is doubtless in the power of the Interstate Commerce Commission to make requirements as to the checks or receipts to be given for baggage if that

subject needs regulation. Act of June 18, 1910, §§ 1 and 15, c. 309, 36 Stat. 539.

Reversed and remanded to the Superior Court of Massachusetts for further proceedings not inconsistent with this opinion.

MR. JUSTICE PITNEY, dissenting.

I have been unable to find a previous instance where any court, in this country at least, in an action by shipper or passenger against common carrier for loss of freight or baggage occasioned by the negligence of the carrier or its employés, has held the recovery to be limited to an arbitrary sum unrelated to the value of the goods lost, and this without any previous valuation or agreement assented to by the shipper or passenger, without any representation of value made by him, and without even notice brought home to him of any rule or regulation upon which the limitation of liability is based. The effect given by the present decision to a "regulation" prescribed by the carrier, that while formally promulgated was in fact unknown to the passenger, seems to me an entire departure from the principles governing the duties and responsibilities of common carriers as heretofore recognized by this court and by the courts of the States generally, as laid down in the text-books and cyclopedias of law, and as reiterated and applied by this court in a recent series of notable decisions.

We are referred to the "Act to Regulate Commerce" of February 4, 1887, c. 104, 24 Stat. 379, as amended June 29, 1906 by the Hepburn Act, c. 3591, 34 Stat. 584, with citation of the provision in § 6 of the act respecting the filing and publication of schedules showing the rates, fares, and charges for transportation, etc., and with particular emphasis upon the so-called Carmack Amendment. I do not find in either of these any phrase or expression that manifests a legislative intent to lessen or limit in any way

the carrier's liability as *quasi*-insurer, much less its responsibility for losses due to its own negligence or that of its employés. Neither enactment in terms imposes any duty or burden upon the shipper or passenger affecting the question at issue; and the Carmack Amendment, at least, contains a clear expression of the legislative purpose to enforce the carrier's responsibility for losses of property caused by it, without regard to any rule or regulation exempting it.

The result reached in the present case—which seems so contrary to all previous adjudications and to the apparent meaning of the acts of Congress—is based (if I understand the opinion), not upon any legislation directly addressed to the particular subject, but upon inferences deduced by indirect reasoning from the assumed policy of the law. The reasoning, as I am constrained to believe, disregards familiar principles established by repeated decisions of this court, in the light of which Congress undoubtedly legislated; and it has the effect of placing honest but unskilled shippers and passengers at a serious disadvantage in dealing with common carriers, enabling the latter, by "regulations" never called to the attention of the former, to obtain practical immunity from responsibility for losses due to their own negligence.

The consequences are so serious that I have been unable to convince myself that I should acquiesce in silence.

The salient facts are mentioned in the opinion, but some are not noticed, and it is proper to state that plaintiff traveled, in September, 1908, as an interstate passenger upon defendant's train from Boston, Massachusetts, to Sunapee Lake, New Hampshire, having in fact paid two first-class fares, one ticket being used for the checking of her baggage, the other for her personal transportation. Defendant's schedules, filed with the Interstate Commerce Commission and published in the mode prescribed by the act of Congress, showed the rates of fares between

these places, and contained a provision stating that "One hundred and fifty pounds of personal baggage, not exceeding one hundred dollars in value will be checked free for each passenger on presentation of a full ticket. . . . For excess weight, charge will be made as follows [here was inserted a table of charges for excess weights, and at the foot of it the following]: For excess value, the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred dollars, or fraction thereof, of increased value declared. The minimum charge for excess value will be 15 cents. Baggage liability is limited to personal baggage not to exceed one hundred dollars in value for a passenger presenting a full ticket . . . unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of checking the baggage." Plaintiff's baggage consisted of three pieces, of the value of $1,904.50, and the charge on this valuation for transportation from Boston to Sunapee Lake, according to the schedules, would have been 25c for each excess $100 or fraction thereof, or $4.75 in all. Plaintiff did not declare and stipulate at the time the baggage was checked that it exceeded $100 in value, and did not pay any charge for valuation in excess of that amount. Defendant's agents did not request any such declaration, and made no inquiry respecting value; but it is found as a fact that from the outward appearance of the baggage when tendered to defendant for transportation any reasonable person would have inferred that its value largely exceeded $100. There was nothing to show that any more expensive or different mode of transportation was adopted for baggage whose value was declared to exceed $100 than for other baggage. Nor was there anything to show that plaintiff, or her agent who attended to the checking of the baggage for her, had notice of defendant's regulations for limiting its liability. In the Boston passenger station notices were posted that "Freight

and passenger tariffs naming rates on interstate traffic are on file with the agent, and will be furnished for inspection upon application;" and in the baggage room was a notice that "One hundred and fifty pounds of personal baggage not exceeding one hundred dollars in value will be checked free for each passenger on presentation of a full ticket." There was nothing in either of these notices to call attention to any charge for excess value, nor any statement in terms that the baggage liability was limited to one hundred dollars. Nor was it shown that the notices themselves were ever seen by plaintiff or her agent. It appears, however, that because the weight of her baggage exceeded by forty-five pounds the weight allowable under the company's rules, a payment of twenty-three cents was made for checking the baggage. Ordinary numbered baggage checks appear to have been delivered to plaintiff's agent, but nothing else in the form of a receipt or bill of lading. The baggage was not lost in transit, but was destroyed by fire while in defendant's charge, more than twenty-six hours after its arrival at defendant's Sunapee Lake Station. It was distinctly found as a fact than the loss was due to defendant's negligence.

In the trial court, plaintiff relied wholly upon a count of her declaration which, after reciting the status of defendant as a common carrier and the contract of carriage in interstate commerce, averred as ground of recovery the neglect and refusal of defendant to deliver the baggage to plaintiff at Sunapee Lake upon demand made, accompanied with a tender of the checks. But the course of the trial shows that negligence was a principal issue, if not the only vital issue; both parties requested findings upon the question, and findings were made in response to their respective requests; and upon review the state Supreme Court treated negligence as the asserted ground of liability, saying (209 Massachusetts, 599): "The plaintiff, an interstate passenger of the defendant, claims

damages in excess of $2,000 for loss of her baggage occurring through the negligence of the defendant."

Although, according to the well known Massachusetts doctrine, the railroad company's responsibility strictly as carrier would seem to have terminated with the completion of the transit and the safe deposit of the baggage in the railroad station, its responsibility thereafter being that of warehouseman, (*Thomas* v. *Boston & Providence Railroad Corp.*, 10 Met. 472, 477; *Norway Plains Co.* v. *Boston & Maine Railroad*, 1 Gray, 263, 273; *Barron* v. *Eldredge*, 100 Massachusetts, 455, 459; *Lane* v. *Boston & Albany Railroad Co.*, 112 Massachusetts, 455, 462; *Stowe* v. *New York &c. Railroad Co.*, 113 Massachusetts, 521, 523; *Rice* v. *Hart*, 118 Massachusetts, 201, 207); the distinction appears to have been ignored by the Massachusetts court in discussing the case, perhaps because it does not affect the responsibility for a loss of goods attributable to negligence; there being in this respect no difference between a carrier and a warehouseman. But it might affect the question whether defendant's responsibility is to be determined in the light of the Interstate Commerce Act; and I concede that it is.

It is of course true that in *Adams Express Co.* v. *Croninger*, 226 U. S. 491, this court held that by the Carmack Amendment (34 Stat. 595, set forth in the margin,[1]) the

[1] "That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."

subject-matter of the liability of railroads under bills of lading issued for interstate freight is placed under Federal regulation so as to supersede the local law and policy of the several States, whether evidenced by judicial decision, by statute, or by state constitution.

And I concede that the Supreme Court of Massachusetts erred if it intended to hold that the carrier's responsibility for interstate passengers' baggage is not likewise within the sweep of the Amendment.

The concrete question, therefore, is whether under the Interstate Commerce Act and the Carmack Amendment this defendant's liability to plaintiff, upon the facts stated, is properly to be limited to one hundred dollars.

My views, in brief, are:

(a) That the baggage regulation limiting the liability to the amount named (if construed as operative without the knowledge or consent of the passenger, and in the absence of an actual valuation of the goods, assented to by the passenger), is not authorized or sanctioned by the Commerce Act, and is invalid because contrary to the established policy of the law governing the common carrier in the performance of its public duties, and because contrary to the letter and spirit of the Carmack Amendment.

(b) That the regulation had not received the approval of the Interstate Commerce Commission, but on the contrary was covered by an adverse administrative ruling made by the commission a few months before the occurrences that gave rise to this action.

(c) That, being invalid *per se*, the regulation derived no legal force or vitality from being included in the filed and published schedules.

(d) That the filing of the regulation cannot give it the force of a contract, because (1) plaintiff was ignorant of the regulation in fact; (2) to make it a part of her contract without her knowledge would render it a contract limiting

the carrier's liability for negligence to an arbitrary sum, without any agreement or representation of value on the part of plaintiff, and therefore void as being contrary to established public policy; and (3) the law will not raise by implication an agreement that is contrary to the policy of the law.

(e) That plaintiff is not estopped to recover the full value of her goods, for she was entirely free from blame in the matter, made no representation as to value and sought no special advantage.

(f) That even were the contract of carriage as actually made, invalid, this would not render the bailment unlawful, and (at least) the carrier would be responsible for the loss of the goods through negligence, irrespective of the contract.

(g) That by the terms of the Carmack Amendment the railroad company in this case is precluded from setting up a limitation of liability, (1) because the limitation, as asserted against a passenger who was ignorant of the regulation and had made no contract under it, amounts to a rule or regulation for exempting the carrier from liability for a loss of property caused by the carrier's negligence, contrary to the terms of the Amendment; and (2) because the carrier waived any benefit of the regulation (if that were valid) by failing to deliver to plaintiff a receipt or bill of lading embodying the terms of the contract as required by the same enactment.

The importance of the subject seems to warrant a somewhat extended discussion.

(1.) Reference is made to § 6 of the Commerce Act as amended by the Hepburn Act; the portion relied upon being that which requires the filed and published schedules to state "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or con-

signee." In this respect the act has remained substantially unchanged since the amendment of March 2, 1889, c. 382, 25 Stat. 855, quoted in the margin.[1]

It is important to observe that § 6, either before or since the Hepburn act, *does not prescribe what the rules and regulations shall be.* Neither this section nor any other section of the act confers upon the carrier any authority over the subject. It is implied that there may be, indeed must be, rules and regulations for carrying on the business of a common carrier, in order to secure system, efficiency and a just performance of its public duties; and § 6, recognizing this, prescribes—and, as I think, only prescribes—that whatever rules and regulations may be duly established which "in any wise change, affect, or determine the rates, fares, and charges, or the value of the

[1] "SEC. 6 (as amended by § 1 of the act of March 2, 1889, c. 382, 25 Stat. 855). That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing *the rates and fares and charges for the transportation of passengers and property* which any such common carrier has established and which are in force at the time upon its route. *The schedules* printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and *shall contain* the classification of freight in force, and shall also state separately the terminal charges and *any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges.* Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. . . . And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force."

service rendered," shall be included in the filed and published schedules. But does it follow from this that the carrier may make any rules and regulations it chooses? Is the carrier to be a law unto itself? And, if not, what are the limitations upon its power? The answer, I think, is plain. The authority to establish rules and regulations, unless it arise from express legislative authority, is derived by implication from the necessities of the case, in view of the nature of the business, and is plainly subject to the limitation that the rules and regulations shall not be such as to contravene the letter or the policy of the law, nor such as to evade responsibility for the due performance of the public duties of the carrier.

This is a principle universally recognized from an early day by the courts of this country, and it lies at the foundation of the rule everywhere prevalent (differing, in this regard, from the rule that prevailed in England for a time prior to the Railway & Canal Traffic Act, 1854, 17 and 18 Vict., c. 31, § 7), that the carrier cannot limit his liability by any general regulation or published notice.

It is for this reason, primarily, that the regulation here in question,—"Baggage liability is limited to personal baggage not to exceed one hundred dollars in value . . . unless a greater value is declared," etc., if treated as intended to be effective without the knowledge or assent of the passenger, seems to me to be a regulation entirely beyond the power of the carrier to establish. The state reports are full of cases recognizing the principle, and applying and enforcing it with respect to the particular subject-matter now under consideration. It is not necessary, however, to go outside of our own reports, for this court from the beginning until now has constantly recognized and steadfastly enforced this limitation of the authority of the common carrier with respect to regulations of the same essential character as the one now in question.

Thus, in *New Jersey Steam Navigation Co.* v. *Merchants Bank*, 6 How. 344, the court held that the carrier could not by published notices seeking to limit its responsibility exonerate itself from the duties which the law annexed to its employment. And, dealing with an express stipulation, the court, by Mr. Justice Nelson (p. 382) said: "But admitting the right thus to restrict his obligation, it by no means follows that he can do so by any act of his own. *He is in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may or may not be assented to.* He is bound to receive and carry all the goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal. And we agree with the court in the case of *Hollister* v. *Nowlen* [19 Wend. 234, 247], that, if any implication is to be indulged from the delivery of the goods under the general notice, it is as strong that the owner intended to insist upon his rights, and the duties of the carrier, as it is that he assented to their qualification. The burden of proof lies on the carrier, and *nothing short of an express stipulation by parol or in writing should be permitted to discharge him from duties which the law has annexed to his employment.*"

In *York Co.* v. *Central Railroad*, 3 Wall. 107, 112, the court, speaking by Mr. Justice Field, said: "The law prescribes the duties and responsibilities of the common carrier. He exercises, in one sense, a public employment, and has duties to the public to perform. Though he may . . . prescribe regulations to protect himself against imposition and fraud, and fix a rate of charges proportionate to the magnitude of the risks he may have to encounter, he can make no discrimination between persons, or vary his charges for their condition or charac-

ter. He is bound to accept all goods offered within the course of his employment, and is liable to an action in case of refusal. He is chargeable for all losses except such as may be occasioned by the act of God or the public enemy. He insures against all accidents which result from human agency, although occurring without any fault or neglect on his part; and *he cannot, by any mere act of his own avoid the responsibility which the law thus imposes. He cannot screen himself from liability by any general or special notice, nor can he coerce the owner to yield assent to a limitation of responsibility by making exorbitant charges when such assent is refused.* The owner of the goods may rely upon this responsibility imposed by the common law, which *can only be restricted and qualified when he expressly stipulates for the restriction and qualification.* But when such stipulation is made, and it does not cover losses from negligence or misconduct, we can perceive no just reason for refusing its recognition and enforcement."

In *Railroad Co.* v. *Manufacturing Co.*, 16 Wall. 318, 329, the court, after repeating the language I have quoted from the opinion in 6 How., proceeded to say: "These considerations against the relaxation of the common law responsibility by public advertisements, *apply with equal force to notices having the same object*, attached to receipts given by carriers on taking the property of those who employ them into their possession for transportation. Both are attempts to obtain, by indirection, exemption from burdens imposed in the interests of trade upon this particular business. *It is not only against the policy of the law, but a serious injury to commerce to allow the carrier to say that the shipper of merchandise assents to the terms proposed in a notice, whether it be general to the public or special to a particular person, merely because he does not expressly dissent from them.* If the parties were on an equality in their dealings with each other there might be some show of reason for assuming acquiescence from silence, but in

the nature of the case this equality does not exist, and, therefore, every intendment should be made in favor of the shipper when he takes a receipt for his property, with restrictive conditions annexed, and says nothing, that he intends to rely upon the law for the security of his rights. *It can readily be seen, if the carrier can reduce his liability in the way proposed, he can transact business on any terms he chooses to prescribe. . . . The law, in conceding to carriers the ability to obtain any reasonable qualification of their responsibility by express contract, has gone as far in this direction as public policy will allow.*"

So in *Railroad Co.* v. *Fraloff*, 100 U. S. 24, 27, the court said: "It is undoubtedly competent for carriers of passengers, by *specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any statute or their duties to the public,* to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such regulations may be practically effective, and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, *it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value;* and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies."

(2.) And if it is against the policy of the law for a common carrier to limit its "common law liability"—that of *quasi*-insurer of goods—by general regulation or published notice not assented to by the passenger or shipper, this is more emphatically true with respect to its responsibility for losses due to the negligence of the carrier or of its servants; for, even by express contract, upon whatever

consideration, the carrier is not permitted to obtain exemption from liability for negligence. *New Jersey Steam Navigation Co.* v. *Merchants Bank*, 6 How. 344, 383; *York Co.* v. *Central Railroad*, 3 Wall. 107, 113; *Railroad Co.* v. *Lockwood*, 17 Wall. 357, 375, 384; *Bank of Kentucky* v. *Adams Express Co.*, 93 U. S. 174, 183.

The rule admits of but one exception, and that is hedged with important qualifications. It is, that where a contract of carriage is fairly made between shipper and carrier agreeing upon a valuation of the property carried, or based upon a valuation declared by the shipper and relied on by the carrier, with a rate of freight based upon a condition limiting the carrier's liability to the amount of the agreed or declared valuation, and the valuation is in good faith relied upon by the carrier and is not a mere cover for an attempt by the carrier to escape liability for negligence, the contract will be recognized as a proper mode of securing a due proportion between the amount for which the carrier is responsible and the freight he receives, and the shipper will be estopped from claiming more than the agreed or declared valuation, even in case of a loss due to negligence. So it was laid down by this court in *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 338, and the grounds of decision were expressed in the opinion of the court (by Mr. Justice Blatchford) in terms so clear that besides being uniformly followed by this court until now, they have been adopted generally by States that adhere to the common law rules of liability. To quote from the opinion (112 U. S. 340): "As a general rule, and in the absence of fraud or imposition, a common carrier is answerable for the loss of a package of goods though he is ignorant of its contents, and though its contents are ever so valuable, if he does not make a special acceptance. This is reasonable, because he can always guard himself by a special acceptance, or by insisting on being informed of the nature and value of the articles before receiving them.

If the shipper is guilty of fraud or imposition, by misrepresenting the nature or value of the articles, he destroys his claim to indemnity, because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed [Citing cases]. This qualification of the liability of the carrier is reasonable, and is as important as the rule which it qualifies. There is no justice in allowing the shipper to be paid a large value for an article which he has induced the carrier to take at a low rate of freight on the assertion and agreement that its value is a less sum that that claimed after a loss. It is just to hold the shipper to his agreement, fairly made, as to value, even where the loss or injury has occurred through the negligence of the carrier. The effect of the agreement is to cheapen the freight and secure the carriage, if there is no loss; and the effect of disregarding the agreement, after a loss, is to expose the carrier to a greater risk than the parties intended he should assume. The agreement as to value, in this case, stands as if the carrier had asked the value of the horses, and had been told by the plaintiff the sum inserted in the contract. The limitation as to value has no tendency to exempt from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. *The shipper is estopped from saying that the value is greater.*"

(3.) Such was the state of the common law of this country, as universally recognized, when the Interstate Commerce Act was passed, and I am unable to see in § 6, or elsewhere in that act, any purpose to change it. During the entire time that intervened between the passage of the act and the passage of the Hepburn Act (including the Carmack Amendment) in 1906, the courts of the States

(except in the few States that adopted a policy less favorable to the carrier), and the Federal courts generally, administered the law as before, and without a suggestion, so far as I have observed, that § 6, in requiring that all rules and regulations having a bearing upon rates should be filed and published, had in any way authorized common carriers by any mere rule or regulation, although properly promulgated, to limit the liability for damages by negligence in the absence of an express agreement as to value assented to by the shipper, or some representation of value made by him.

Indeed, this court, in the recent case of *Pennsylvania Railroad* v. *Hughes*, 191 U. S. 477, 488, held that § 6, as it stood after the amendment of March 2, 1889, and before the Hepburn Act, did not amount to a regulation of the matter of a limitation of the carrier's liability to a particular sum in consideration of lower freight rates for transportation. To quote from the opinion (pp. 487, 488): "It may be assumed that under the broad power conferred upon Congress over interstate commerce as defined in repeated decisions of this court, it would be lawful for that body to make provision as to contracts for interstate carriage, permitting the carrier to limit its liability to a particular sum in consideration of lower freight rates for transportation. But upon examination of the terms of the law relied upon we fail to find any such provision therein. The sections of the interstate commerce law relied upon by the learned counsel for plaintiff in error, 24 Stat. 379, 382; 25 Stat. 855, provide for equal facilities to shippers for the interchange of traffic; for non-discrimination in freight rates; *for keeping schedules of rates open to public inspection; for posting the same in public places, with certain particulars as to charges, rules and regulations;* . . . giving remedies for the enforcement of the foregoing provisions, and providing penalties for their violation. . . . While under these provisions it may be said that Congress

has made it obligatory to provide proper facilities for interstate carriage of freight, and has prevented carriers from obstructing continuous shipments on interstate lines, *we look in vain for any regulation of the matter here in controversy. There is no sanction of agreements of this character limiting liability to stipulated valuations*, and, until Congress shall legislate upon it, is there any valid objection to the State enforcing its own regulations upon the subject, although it may to this extent indirectly affect interstate commerce contracts of carriage?"

This query was by the decision answered in the negative. And as a result, notwithstanding § 6 of the Commerce Act, the courts of Pennsylvania were left free to disregard the rule laid down in *Hart* v. *Pennsylvania Railroad* and to follow their own declared doctrine denying the right of a common carrier to limit its liability for losses due to negligence, even by a special agreement including a valuation assented to by the shipper. In this respect the situation was changed by the Carmack Amendment to the Hepburn Act, but not (so far as I can see) by any of the changes made in § 6 by that act.

(4.) And I had supposed that since as before the Carmack Amendment, under the decisions of this court in *Adams Express Co.* v. *Croninger*, 226 U. S. 491, and the other cases that have followed it along the same line, the general rules of law that disabled the common carrier from establishing regulations for limiting its liability by general notice not brought home to the shipper, and debarred the carrier from limiting its liability for losses due to negligence except by a special agreement including a fair valuation assented to by the shipper, had remained in full force and vigor, and indeed by the effect of the Amendment had been made the exclusive rule of conduct for interstate carriers by rail. For the *Croninger Case* not only held (negatively) that the Amendment superseded state laws upon the subject, but (affirmatively)

that in matters not covered by its own express terms it had the effect of establishing the common law rules respecting the carrier's liability, as laid down in previous decisions of this court, and adopted generally by the Federal courts. To quote from the opinion (p. 504): "Prior to that amendment the rule of carrier's liability, for an interstate shipment of property, as enforced in both Federal and state courts, was either that of the general common law as declared by this court and enforced in the Federal courts throughout the United States, *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331; or that determined by the supposed public policy of a particular State, *Pennsylvania Railroad* v. *Hughes*, 191 U. S. 477; or that prescribed by statute law of a particular State, *Chicago &c. Railroad* v. *Solan*, 169 U. S. 133. Neither uniformity of obligation nor of liability was possible until Congress should deal with the subject. . . ." (Page 505): "That the legislation supersedes all the regulations and policies of a particular State upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulation with reference to it. . . ." (Page 507): "But it has been argued that the non-exclusive character of this regulation is manifested by the proviso of the section, and that state legislation upon the same subject is not superseded, and that the holder of any such bill of lading may resort to any right of action against such a carrier conferred by existing state law. This view is untenable. It would result in the nullification of the regulation of a national subject and operate to maintain the confusion of the diverse regulation which it was the purpose of Congress

to put an end to. . . . *To construe this proviso as preserving to the holder of any such bill of lading any right or remedy which he may have had under existing Federal law at the time of his action, gives to it a more rational interpretation* than one which would preserve rights and remedies under existing state laws, for the latter view would cause the proviso to destroy the act itself."

It was upon this construction of the act that we proceeded to determine the validity of the provision in the receipt or bill of lading there in question, which limited the liability of the carrier to the agreed value of $50; and we applied thereto the familiar rules to which I have already referred. Thus (p. 509): "That a common carrier cannot exempt himself from liability for his own negligence or that of his servants is elementary. *York Mfg. Co.* v. *Illinois Central Railroad*, 3 Wall. 107; *Railroad Co.* v. *Lockwood*, 17 Wall. 357; *Bank of Kentucky* v. *Adams Express Co.*, 93 U. S. 174; *Hart* v. *Pennsylvania Railroad*, 112 U. S. 331, 338. The rule of the common law did not limit his liability to loss and damage due to his own negligence, or that of his servants. That rule went beyond this and he was liable for any loss or damage which resulted from human agency, or any cause not the act of God or the public enemy. *But the rigor of this liability might be modified through any fair, reasonable and just agreement with the shipper which did not include exemption against the negligence of the carrier or his servants.* The inherent right to receive a compensation commensurate with the risk involved the right to protect himself from fraud and imposition by reasonable rules and regulations, and the right to agree upon a rate proportionate to the value of the property transported. It has therefore become *an established rule of the common law as declared by this court in many cases that such a carrier may by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the*

purpose of obtaining the lower of two or more rates of charges proportioned to the amount of the risk."

The other decisions that have followed the *Croninger Case* (*C., B. & Q. Railway* v. *Miller*, 226 U. S. 513; *Chicago, St. P. &c. Ry.* v. *Latta*, 226 U. S. 519; *Wells, Fargo & Co.* v. *Neiman-Marcus Co.*, 227 U. S. 469; *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639; *Mo., Kans. & Tex. Ry. Co.* v. *Harriman*, 227 U. S. 657; *Chicago, R. I. & Pac. Ry. Co.* v. *Cramer*, 232 U. S. 490; *Great Northern Railway* v. *O'Connor*, 232 U. S. 508), have simply applied the doctrine therein laid down, under varying circumstances.

In each of these cases there was a special contract, held by the court to have been fairly made, and to amount to a valuation by the shipper of the goods in question for the purposes of the shipment. In short, the court in each instance applied the rule of liability laid down in *Hart* v. *Pennsylvania Railroad, supra.*

(5.) Because of this firmly established policy of the law respecting the carrier's responsibility for the consequences of his negligence, I should have construed the "regulation" in question, limiting the baggage liability to $100, in subordination to that policy. According to the canon uniformly applied in construing statutes, that of giving them no meaning beyond that which the legislature may constitutionally enact, I should have construed the baggage regulation as a formula for standardizing the contracts proposed to be made by the carrier with the assent of passengers; not that the formula of itself constituted a substitute for a contract, or was intended to become binding upon the passenger until directly brought to his notice and in some way consciously assented to by him.

But my brethren construe it as binding in the absence of any knowledge or assent on the part of the passenger. So considered, I deem it void as being a regulation that was beyond the power of the common carrier to adopt. And if I am right about this, the fact that it was included

in the filed and published schedules does not in the least add to its efficacy.

It is not a question of mere unreasonableness. A carrier may resort to practices that are so clearly unwarranted by law as to require no preliminary application to the Commission, and that not even the sanction of the Commission could validate. I think the attempt to enforce, *ex parte*, such a limitation of liability is in that category.

(6). But, in fact, the Commission had distinctly ruled against the validity of the regulation in question, construed as the court now construes it; and had done this prior to the time this action arose.

I find nothing savoring of approval in Paragraph 34(g) of Tariff Circular No. 15A, effective April 15, 1908. The reference to "Excess-baggage rates" is to charges for excess weight, as I think sufficiently appears from 26 I. C. C. 292. But, if intended to apply to excess value, it does not suggest that a limitation of liability for losses attributable to negligence, effective without the knowledge or consent of the passenger, is to be made a part of such regulations.

And in *Matter of Released Rates*, 13 I. C. C. 550, decided May 14, 1908, the Commission, after full hearing and consideration, made an administrative interpretation of the Carmack Amendment, holding distinctly that it did not abrogate the law of the *Lockwood Case*, 17 Wall. 357, and the *Hart Case*, 112 U. S. 331. Among other rules laid down (Mr. Commissioner Lane writing), were these (p. 553): "(b) When the shipper has placed upon his goods a specific value, the carrier accepting the same in good faith as their real value, the rate of freight being fixed in accordance therewith, the shipper cannot recover an amount in excess of the value he has disclosed, even when loss is caused by the carrier's negligence," [citing the *Hart Case*, and quoting in italics from the opinion to the effect that under the circumstances disclosed "*the shipper is estopped*

from saying that the value is greater"]. And again (p. 554): "The same principle is applicable when the shipper has in some other way concealed the nature or the value of his goods in order to secure a lower rate of freight. . . . It does not appear that this principle is in any respect in derogation of the provisions of § 20 [meaning the Carmack Amendment]. The carrier is made liable 'for any loss, damage, or injury,' and 'no contract, receipt, rule, or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed.' But it is of the highest importance to note that this limitation is not secured by contract or notice—the contract has no validity *per se*. It is only right that a carrier who has acted in good faith should be protected against the frauds and misrepresentations of the shipper, and the law accomplishes this through the operation of the principle of estoppel. The shipper is estopped from recovering an amount in excess of the declared value, and the rule is in perfect harmony with the law as it stands to-day. 6 Cyc. of Law & Proc., title "Carriers," p. 401, note 5. (c) *If the specified amount does not purport to be an agreed valuation, but represents an attempt on the part of the carrier to limit the amount of recovery to a fixed sum, irrespective of the actual value, the stipulation is void as against loss due to the carrier's negligence or other misconduct.* Much confusion has arisen from failure to distinguish between this situation and the situation comprehended in *Hart* v. *Pennsylvania Railroad Co., supra.* That decision was expressly predicated upon the principle of estoppel; the shipper had misrepresented the value of his property, and had thereby secured the benefit of a lower rate than he was properly entitled to by virtue of the real value. He was estopped by his fraudulent conduct from recovering an amount in excess of the value he had declared. In the case we are now considering, the requisites of estoppel are wanting. An estoppel cannot

arise unless the party invoking it has been the victim of misrepresentation, and has himself acted in good faith. Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount of its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not; it has not acted in good faith, neither has it been the victim of misrepresentation." And again, (p. 556): "(d) *If the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious, and represents an attempt to limit the carrier's liability to an arbitrary amount, liability for the full value cannot be escaped in event of loss due to negligence.* This situation is substantially identical with that just considered—the difference is one in form only."

(7.) In the *Hart Case,* 112 U. S. 331, the fundamental ground of decision, as appears from what has been quoted from the opinion, was that since the shipper had entered into a special agreement for the purpose of cheapening the freight *he was estopped from saying that the value of the goods was greater than the value represented by him for the purposes of the agreement.* So, also, in the *Croninger Case,* and the other recent cases referred to, *estoppel was the ground of decision,* as the opinions clearly show (226 U. S. p. 510, bottom; 227 U. S. p. 476, top; 227 U. S. p. 651, top; 227 U. S. p. 668, bottom). When participating in these decisions, I, for one, so understood them. In each case the principle of estoppel is essential to the reasoning. In the *Carl Case* (227 U. S. p. 651), it was said: "When a shipper delivers a package for shipment and declares a value, either upon request or voluntarily, and the carrier makes a rate accordingly, the shipper is estopped upon plain principles of justice from recovering, in case of loss or damage, any greater amount. The same principle applies if the value be declared in the form of a contract. If such a valuation be made in good faith for

the purpose of obtaining the lower rate applicable to a shipment of the declared value, there is no exemption from carrier liability due to negligence forbidden by the statute when the shipper is limited to a recovery of the value so declared. The ground upon which such a declared or agreed value is upheld is that of estoppel." [Citing the *Hart Case* upon this precise point.] And in the *Harriman Case* (227 U. S. p. 668), the topic is summed up as follows: "The ground upon which the shipper is limited to the valuation declared is that of estoppel, and presupposes the valuation to be one made for the purpose of applying the lower of two rates based upon the value of the cattle. This whole matter has been so fully considered in *Adams Express Co.* v. *Croninger*, 226 U. S. 491, and *Kansas City Southern Railway* v. *Carl*, just decided, that we only need to refer to the opinions in those cases without further elaboration."

That these decisions are inconsistent with the theory that the mere act of including the regulations upon the subject in the filed schedules would operate to limit the liability of the carrier, without any representation or agreement as to value, assented to by the shipper, seems to me equally clear. Although in each case the relation of the rate differential to the question of valuation was brought home to the shipper, so that it appeared that the shipper had actual notice of the regulation upon the subject contained in the filed and published schedules, it was not suggested that the mere existence of such a regulation, coupled with the fact that the shipment was made at the more advantageous freight rate, had the effect of limiting the liability of the carrier in the event of a loss attributable to negligence. On the contrary, while the relation of the rate differential to the valuation was discussed, it was treated as merely showing that there was consideration for the agreement made by the shipper limiting the responsibility of the carrier, and as showing

the reasonableness of that agreement and the grounds of the estoppel that grew out of it. It was in each case plainly implied, if not expressed, that some representation or valuation, consciously assented to by the shipper, was essential to the limitation of the carrier's liability.

In the present case there is no ground for an estoppel against the plaintiff. She made no representation of any kind, her silence being attributable to her ignorance of the existence of the baggage regulation. No estoppel arises where the conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake; and the same is more evidently true when the innocent party is silent because not asked to speak and unaware that there is occasion—much less, duty—to speak. There is, I think, no support in reason or authority for holding that a person acting in good faith but in ignorance of his rights or of the rights of the other party, should be estopped on the ground of knowledge imputed to him by a mere fiction of the law. It is only when good faith requires one to speak that silence estops him; and in the findings of fact in this case there is not the slightest ground to attribute to the plaintiff any want of good faith. Estoppel *in pais* presupposes an actual fault or a culpable silence. *Merchants Bank* v. *State Bank*, 10 Wall. 604, 605; *Morgan* v. *Railroad Co.*, 96 U. S. 716, 720.

And it seems sufficiently obvious that the railroad company did not in any wise rely upon plaintiff's silence to its disadvantage. There would, I think, be more reason for holding the company itself estopped, because it, and not the plaintiff, had knowledge of the baggage regulation; and, according to the findings, it was charged with notice that the baggage was worth much more than one hundred dollars; and the circumstances appearing from the facts as found, clearly indicate that plaintiff, through her agent, in effect tendered herself ready and willing to pay for her fare and baggage charges whatever was proper under the

circumstances; and the company set its own price for the service it was to render.

When the carrier was thus applied to by one of the traveling public for the performance of a transportation service in the line of its public duty, without any intimation that anything less than the full measure of the carrier's responsibility would be accepted, it was the carrier's duty, I think, according to principles hitherto recognized, to quote a rate commensurate with the service demanded, including an unlimited responsibility where nothing less was mentioned. If the law required it to charge a higher rate for unlimited than for limited responsibility, it was its duty to quote such higher rate. Having failed to do this, it ought not afterwards to be permitted to take advantage of its own wrong. In view of the Commerce Act, I do not think the carrier, under such circumstances, is estopped from afterwards claiming the additional compensation that it ought to have exacted when quoting the rate. But I do think it ought to be held estopped from setting up any limitation of its responsibility, when no such limitation was in the contemplation of the patron on demanding the service.

(8.) As I read the Interstate Commerce Act, it expresses in its own terms the extent of the prohibition of special contracts of carriage. As has often been said, the main purpose of the act was to prevent discrimination, and the filing of the schedules is the principal means to that end. Section 6, as amended in 1906 (34 Stat. 587, c. 3591), prohibits the carrier from transporting passengers or property unless the rates, fares, and charges upon which the same are transported have been filed and published in accordance with the act; from charging or collecting a different compensation for such transportation or for any service in connection with it than as specified in the tariff; and from refunding or remitting in any manner or by any device any portion of the specified rates, or ex-

tending to any shipper or person any privileges or facilities except such as are specified in the tariff. When, therefore, a carrier has established and promulgated its tariff, with regulations as to service such as it has a lawful right to establish, the effect of § 6 is to render unlawful any special contract of carriage made in contravention of the rates and regulations thus standardized in accordance with the law. Such is the effect of § 6 of the act, and it was held to have that effect before the passage of the Hepburn Act. *Gulf, Colorado &c. Ry.* v. *Hefley* (1895), 158 U. S. 98; *Texas & Pacific Ry.* v. *Mugg* (1906), 202 U. S. 242; *Chicago & Alton R. Co.* v. *Kirby*, 225 U. S. 155. All of these cases arose before the Hepburn Act, and the decisions were based upon § 6 of the act of February 4, 1887, c. 104, 24 Stat. 379, as amended by act of March 2, 1889, c. 382, 25 Stat. 855 (set forth above in the margin), which required the carrier to print and publicly post at each station for the inspection and information of the public the schedules of fares and rates for carriage of passengers and property, and provided that it should be unlawful for the carrier to depart from the published schedules; and upon the third section of the original act, which made it unlawful to give any undue or unreasonable preference or advantage to any particular shipper. In the *Hefley Case* the question decided was simply that a statute of Texas imposing a penalty for a failure to deliver goods on tender of the rate named in the bill of lading was not applicable to interstate shipments. But the effect of the decision was to declare that one who had obtained from a common carrier transportation of goods from one State to another at a rate specified in the bill of lading, but less than the published schedule of rates filed with and approved by the Interstate Commerce Commission and in force at the time, whether he did or did not know that the rate obtained was less than the scheduled rate, was not entitled to recover the goods upon the tender of payment

of the amount of charges named in the bill of lading, or of any sum less than the scheduled rates; in other words, that a special contract inconsistent with the published tariff could not avail. This principle was adopted as the ground of decision in the *Mugg Case*. And in the *Kirby Case*, likewise, it was held that as the broad purpose of the act was to compel the establishment of reasonable rates and their uniform application, a special contract by which advantage was given to a particular shipper could not be enforced. The distinction between a ground of action based upon the breach of such a special contract and one based upon the carrier's liability for negligence was clearly recognized in the opinion (225 U. S. p. 166), and the latter ground of liability rejected because not presented by the record. To the same effect is *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467, 476, which arose after the Hepburn Act.

These cases rest fundamentally upon the ground that to allow the shipper to have the benefit of a special agreement for lower rates or for better service than the standard rates and service prescribed by the published schedules would in effect compel the carrier to violate the provisions of the act. In this sense, and to this extent, all shippers are "bound" by the provisions of the act that bind the carrier. But to say that because of this a shipper or a passenger who has made no special contract at all, and claims the benefit of none, shall be conclusively deemed to have made a special contract, involving terms and conditions of which he was wholly ignorant, strikes me as a manifest *non sequitur*. And to hold that a passenger whose rights rest not upon any contract of shipment, but upon the negligence of the carrier, shall be barred from recovering full redress for the consequences of that negligence, upon the theory that he has unconsciously attempted to make a special contract in contravention of the act, is, I submit with respect, equally illogical. It seems also a

complete reversal of the *Hart Case* and the *Croninger Case*,—which declare that a carrier's liability for negligence can only be limited by such a contract or representation as shall estop the shipper,—to now hold that without any express contract or representation by the shipper the liability is limited, on the theory that he is legally charged with notice of requirements of which he was in fact ignorant.

It is true that in the case at bar, the Supreme Court of Massachusetts (209 Massachusetts, at p. 602) unnecessarily, and, as I think, erroneously, conceded that if the regulation limiting the baggage liability to one hundred dollars in value was so related to the rates of transportation of passengers as to be a part of such rate, the plaintiff was "bound," regardless of her knowledge or assent, and therefore her recovery in this action would be limited accordingly. The error, as it seems to me, arose from a misconception of the effect of the decisions in the *Hefley* and *Mugg Cases*. The fallacy, if I am correct in deeming it to be such, lies in the double sense of the word "bound." I respectfully suggest that this court, in a matter of such far-reaching importance, ought not to accept the concession without testing its soundness.

If it were said that because she did not know of, and therefore did not assent to, a limitation of liability to $100, she remained still liable to pay to the railroad company the amount of money properly chargeable for the excess of valuation, and that the company had a lien upon the baggage for this amount on its arrival at destination, I could see the force of the suggestion. This would, perhaps, be within the doctrine of the *Hefley* and *Mugg Cases*. (Of course, I do not mean to say that the lien would survive after the goods were lost through the company's negligence.) But I can find nothing in any of the cases referred to that lends support to the view that a railroad company can limit its liability by limiting the rate charged,

without according to the shipper or passenger any voice in the matter.

The expressions employed in the *Carl Case* (227 U. S. p. 652), that "The valuation the shipper declares determines the legal rate where there are two rates based upon valuation," and that "When there are two published rates, based upon difference in value, the legal rate automatically attaches itself to the declared or agreed value," had reference to the effect of a voluntary declaration made by a shipper who fixes the valuation of his goods for the purposes of the shipment, knowing that the valuation determines the rate that must be charged, although perhaps unaware what the precise rate may be. The same is true of similar language used in the *Harriman Case* (227 U. S. at p. 669), the *Cramer Case* (232 U. S. at p. 493), and the *O'Connor Case* (232 U. S. at p. 515). I am unable to see that the reasoning applies to the case of a shipper or passenger who has declared no valuation, has exercised no choice, and is unaware that a choice is open.

To say that constructive notice of the filed regulation, of which plaintiff was in fact ignorant, gave her an actual opportunity to declare the value of her baggage, pay the excess tariff rate, and thus secure the liability of the carrier to the full amount of her baggage, is to say that a fiction is the same as a fact.

(9.) In the *Croninger Case*, and the others of the same class, the shipper consciously accepted a benefit in the form of a reduced freight charge as the consideration of an agreement voluntarily made valuing the goods for the purposes of the shipment. But here the plaintiff did nothing of the kind. She paid the full price asked by the carrier for transportation of herself and her baggage, unaware of any regulation of the carrier that would require the payment of an additional charge for an unlimited liability for baggage. If she were setting up and relying upon any special contract made in violation of the law,

the doctrine of the *Hefley, Mugg* and *Kirby Cases* would apply. But her cause of action is complete without resort to any contract, special or general; and the contract of which her passage tickets and the baggage checks were the tokens, was merely the medium by which the carrier became possessed of her baggage. Having that baggage in its possession, the responsibility of the carrier for the exercise by itself and its employés of reasonable care for the safety of the goods arose under general principles of law independent of the contract; and those general principles as administered in the Federal courts (the same as in the courts of Massachusetts), entitled her to compensation upon the basis of the actual value of the goods lost, in the absence of a special agreement or of some representation of value made by her, limiting that liability.

Conceding, for argument's sake, that the contract of carriage as made between plaintiff and defendant, if deemed to import responsibility for the entire value of the baggage, was invalid because not made in accordance with the regulations filed and published in connection with the rate schedules, and because of the provisions of the Interstate Commerce Act that in effect forbid the making of contracts otherwise than in accord with those schedules,—even so, the plaintiff was in no wise at fault. She was unaware that she was at liberty to exercise any option, to say nothing of being under an obligation to do so. The fault was wholly with defendant, for it made no inquiry respecting the value of her baggage, and gave her no notice of any limitation of liability, although itself charged with notice from the very appearance of the baggage that it must have been worth more than $100. And her present action is based upon the carrier's negligence, and not upon an affirmance of the contract.

Irrespective of the contract, the carrier, like any other bailee for hire, was bound to take reasonable care to preserve the property ready for delivery to its owner. I can

find nothing in the letter or the spirit of the Commerce Act that forfeits her property or any part of its value because of her violation of the act, supposing her to have violated it. And since, through the carrier's negligence, the property was lost, it follows, on general principles, that her right of action, upon grounds independent of the contract, remains; it being based upon the general obligation of the bailee to do justice. The principle is fundamental and familiar, and has been applied in a great variety of cases. *Planters Bank* v. *Union Bank*, 16 Wall. 483, 500; *Philadelphia, W. & B. R. Co.* v. *Philadelphia Towboat Co.*, 23 How. 209, 217; *Spring Co.* v. *Knowlton*, 103 U. S. 49, 58; *Armstrong* v. *American Exchange Bank*, 133 U. S. 433, 466; *Logan County Bank* v. *Townsend*, 139 U. S. 67, 75; *Pullman's Car Co.* v. *Transportation Co.*, 171 U. S. 138, 151. And see *Newbury* v. *Luke*, 68 N. J. Law, 189, 191; *Dunlop* v. *Mercer*, 156 Fed. Rep. 545, 555; *In re Bunch Co.*, 180 Fed. Rep. 519, 527.

In *Merchants Cotton Press Co.* v. *N. A. Insurance Co.*, 151 U. S. 368, 388, this court held that while an agreement for special rates, rebates, or drawbacks was void under the Interstate Commerce Act, the law did not make the contract of affreightment otherwise void, nor prevent liability on the part of the carrier for the freight received; that such a construction would encourage rather than discourage unlawful agreements for rebates, since the carrier might prefer them to a liability for the freight; and that although the contract for rebate was void and unenforceable, the shipper could nevertheless recover for loss of his freight through the carrier's negligence. This decision has never been overruled or qualified, and it seems to me quite decisive of the present question.

(10.) Thus far I have treated the case as one arising under the common law rules respecting the carrier's liability, as laid down in the decisions of this court and adopted generally by the Federal courts. I have en-

deavored to show that a limitation of the carrier's liability is not permitted except it result from some actual representation or contract consciously assented to by the shipper, valuing the goods for the purposes of the shipment; that the sole ground for limiting the responsibility to this extent is that the shipper is estopped by his contract or his representations; that no different result is to be derived by any implication from the provisions of § 6 of the Interstate Commerce Act, which merely prevents the making of a special agreement inconsistent with the schedules, and does not compel the assumption (contrary to the fact) that a special agreement was made in conformity to them; that an agreement inconsistent with the schedules, even if void in itself, does not make the contract of affreightment otherwise void, nor prevent liability on the part of the carrier for loss of the goods attributable to its negligence; and that a shipper who has acted in good faith is not to be estopped upon the theory that a fiction or presumption of knowledge is equivalent to actual knowledge, or amounts to the same as conscious misrepresentation. I have hitherto refrained from attributing any special force to the Carmack amendment as regulative of the subject-matter.

But let us now consider the specific force of that amendment (34 Stat. 584, p. 595, c. 3591, § 7, quoted in full in the marginal note, *ante*, p. 126). It declares (*inter alia*) that a railroad company receiving property for interstate transportation "shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it . . . , and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed." It was concerning this provision that the court said in the *Croninger Case*, speaking by Mr. Justice Lurton, 226 U. S. p. 505: "That the legislation supersedes all the regulations and policies of a particular State upon the same subject results from its general character. It em-

braces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation or contract." This was equivalent to saying that because the carrier was obliged to issue to the shipper a receipt or bill of lading for the goods, and because the terms of the contract of carriage and rules and regulations pertaining thereto are presumably embodied in the receipt or bill of lading, therefore the act must be deemed an exercise by Congress of its general and exclusive power over the subject-matter.

And the language of the enactment shows that it was framed in view of the general and familiar practice of embodying in the receipt or bill of lading all the terms of the contract, including the valuation of the goods and the rules and regulations for limiting the liability of the carrier. Is it not perfectly manifest that when Congress declared that the carrier "shall issue a receipt or bill of lading" it intended that this document should embody the "contract, receipt, rule, or regulation" that are mentioned in the same clause? Is it possible, without twisting the words from their plain meaning, to read this so that the duty of the carrier shall be performed if it issues a receipt or bill of lading that does not evidence the contract between the parties, and the whole of that contract?

But in the present case there was no receipt or bill of lading within the meaning of the Carmack amendment as thus interpreted. There was nothing but three baggage checks, each bearing an identifying number, but, so far as the case shows, nothing else. I cannot agree that the statute leaves the carrier free to give a mere identifying token, instead of a "receipt or bill of lading." But, if I am wrong in this, it seems too clear for argument that so far as the carrier intends that any of its rules or regulations respecting its responsibility for the baggage are to be imported into the contract, it is incumbent upon it to set

them forth plainly in a bill of lading delivered to the shipper or passenger. If the act admits of the construction that a mere identifying token or check can be used in the place of a formal receipt or bill of lading, it for that reason must require the construction that the carrier may, and that he does thereby, waive the benefit and protection of the rules and regulations. For I cannot believe that the Carmack amendment is open to the construction that the shipper shall be bound by special terms or conditions respecting anything pertaining to the contract of carriage and the carrier's responsibility, while the shipper is in fact ignorant of them. This would leave the carrier free to set a trap for the innocent shipper or passenger. Nor can I agree that the act requires any affirmative regulation by the Interstate Commerce Commission prescribing the form of receipts to be given for baggage. I concede the Commission may regulate the matter, so long as it does so in conformity to the letter and spirit of the statute; but not that the act remains without vitality until the Commission breathes into it the breath of life. In my view, the railroad company in the present case, having failed to give such a receipt or bill of lading as the statute contemplates, cannot be heard to set up any limitation of its liability for the value of the goods, for it would thereby in effect claim a benefit from its own violation of the law.

I submit that the Hepburn Act, like the original act and its other amendments, is intended to impose duties upon the carrier—the public servant—not upon the shipper or passenger. There is nothing in the letter or the policy of the acts to absolve the carrier from its long-recognized duty to treat all shippers and passengers fairly, and to give them an actual opportunity to make a choice, where a choice is legally open to them. A carrier may not absolve himself in whole or in part from his responsibilities by any *ex parte* action. And where the rate schedules and accompanying regulations are designed to give an option

to the shipper, it is, I submit, incumbent upon the carrier to see that the option is in good faith tendered, or else abide by the more onerous of the alternatives. The Carmack amendment means this, at least, if it means nothing more. Therefore, the failure to deliver a bill of lading evidencing the limitation of liability should impose upon the carrier the highest responsibility, not the least, that the regulations admit of; that is to say, an unlimited responsibility for the goods.

(11.) The serious consequences of the present decision are sufficiently manifest. Heretofore, shippers and passengers have been entitled to rest in the assurance that a common carrier who accepted their goods for transportation in the ordinary course of a carrier's public employment, became responsible, without any express contract upon the subject, for the full value of the goods, in case of their destruction through any negligence of the carrier or its agents, unless there was a distinct understanding to the contrary, participated in by the shipper or passenger. Hereafter, so far as interstate shipments by rail are concerned, the traveler or shipper cannot rest upon any such assurance, and will not be safe in dealing with a railroad company without being authoritatively instructed respecting the latest regulations filed by the carrier with the Interstate Commerce Commission at Washington. He cannot rely upon finding the regulations posted in the railroad station, for this is not essential to the efficacy of the schedules (*Texas & Pac. Ry.* v. *Cisco Oil Mill*, 204 U. S. 449). He cannot rely upon public notices that may be in fact posted in the station, for these may be misleading, as they were in the present case. He cannot rely upon receiving information from the company's local agents, for this may be withheld, as it was in this case. Unless he is possessed of a copy of the tariff schedules as filed, with time enough to scrutinize them, and skill enough to comprehend them, he must perforce accept

whatever terms the railroad company may see fit to offer, and may not hope to be furnished with even a scrap of paper to indicate what those terms are.

I can find no support for the result thus reached, either in the statute or in any previous decision.